CLUB LAW

AND THE LAW OF

UNREGISTERED FRIENDLY SOCIETIES:

BY

H. MALONE

THIRD EDITION.

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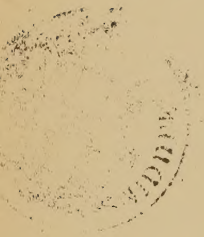


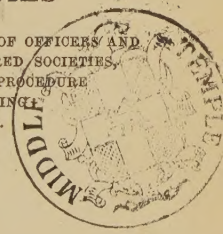
DALY'S

CLUB LAW

AND THE

LAW OF UNREGISTERED FRIENDLY SOCIETIES

A HAND-BOOK OF THE RIGHTS AND LIABILITIES OF OFFICERS AND MEMBERS OF CLUBS, AND OTHER UNREGISTERED SOCIETIES, INTER SE, AND AS REGARDS STRANGERS; PROCEDURE IN ACTIONS BY OR AGAINST; GAMBLING; DRINKING; LEADING CASES, ETC.



THIRD EDITION

BY

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Of Lincoln's Inn and the North-Eastern Circuit

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PREFACE TO THE THIRD EDITION.

As there have been many decisions and much legislation affecting the law of Clubs and Friendly Societies since the second edition of this book was published in 1889, I have found it expedient to depart considerably from the original text, and Mr. Daly's arrangement and classification of the various heads of the subject. In so doing I have aimed at reducing the mass of authorities into such a framework that the practitioner, or club official when in difficulty, will be able

to find his law upon any point conveniently and succinctly set out without any undue circumlocution. I have endeavoured to refer to all the relevant authorities obtainable up to the date of publication. For the arrangement and subdivisions of the subject I am indebted to Lord Halsbury's Laws of England.

HERBERT MALONE.

2, Garden Court,
Temple, E.C.4.
February, 1923.

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THE LAW OF CLUBS

AND

Similar Voluntary Associations

INCLUDING

Friendly Societies.

CHAPTER I.

NATURE AND CLASSIFICATION OF CLUBS.

Definition generally.

WHEN a layman speaks of his "Club," he usually means what a lawyer would call an "unincorporated members' club," *i.e.*, a society of persons associated together for social intercourse, sport, politics, or indeed for any purpose other than the acquisition of gain.

Owing, however, to the great increase in the number and character of clubs and of new legislation and judicial interpretation, it becomes necessary to recollect that there are many societies

which differ very considerably in their legal aspect from that particular organisation—or "home from home," to which I have referred in legal parlance as an "unincorporated members' club."

Classification of clubs.

Accordingly it is convenient to classify clubs as follows :—

I. Unincorporated members' clubs.
II. Unincorporated proprietary clubs.
III. Clubs incorporated under the Companies Acts, 1862—1908.
IV. Working men's clubs registered under the Friendly Societies Act, 1896.
V. Shop clubs.

I. UNINCORPORATED MEMBERS' CLUB.

Such a society may be associated for practically any purpose which is not (1) *contra bonos mores*, and (2) which is not an organisation for the making of profits.

Within these limitations its purposes may be altered or modified at the will of its members (*a*).

Profit making being eliminated—it is not a partnership (*b*), nor is it an association requiring registration as a company (*c*).

The position, therefore, of an unincorporated members' club is that it is simply an entity. Neither a company nor a corporate body of any sort, and it is unrecognised by law (*d*).

Each member usually contributes by entrance fees and subscriptions to the

(*a*) *Thellusson* v. *Valentia*, [1907] 2 Ch. 1, C. A.

(*b*) *Flemyng* v. *Hector* (1836), 2 M. & W. 172; and Partnership Act, 1890, s. 1.

(*c*) *Re St. James' Club* (1852), 2 De G. M. & G. 383; *Re Bristol Athenæum* (1889), 43 Ch. D. 236; and Companies (Consolidation) Act, 1908, s. 1 (2).

(*d*) *Per* DAY, J., *Steele* v. *Gourley* (1886), 3 T. L. R. 119, and 772 (C. A.).

NOTE.—As to Golf Club profits, see *Carlisle and Silloth* G. C. v. *Smith* (1913), 82 L. J. K. B. 837.

society's funds, out of which its expenses are paid, and all members are jointly entitled to the property of the club, which is usually vested in trustees.

The members, as long as they continue to remain such by paying their subscriptions, are only entitled to the use of the club premises and the club privileges, and it is only upon dissolution that the interest of each member can be realised. (See "Dissolution of Clubs," *post*, p. 144) (*e*).

Rights and liabilities of members.

The rights and liabilities of members, subject to certain qualifications to which the reader is referred under the head of "Constitution and Internal Arrangements" (*post*, p. 34), depend upon the rules.

Depend upon rules.

The club property is the property

(*e*) *Holmes* v. *Bagge* (1853), 1 E. & B. 782, 22 L. J. Q. B. 301.

of all the members, and therefore, except in pursuance of the objects for which the club exists or for purposes incidental thereto, no portion of the club property may be alienated except with the consent of every member, and so where a majority of a general meeting of a curling club, resolved to present a cup —which was won by the club—to a distinguished player: Held that such a resolution was *ultra vires* (*f*). By parity of reasoning, therefore, where goods are supplied to a member at a price, this is not a sale but a release by other members of their interest in the goods supplied (*g*).

Alienation of Property, only by consent of all.

Sale of provisions.

(*f*) *Murray* v. *Johnston* (1896), 23 R. (Ct. of Sess.) 981.

(*g*) *Graff* v. *Evans* (1882), 8 Q. B. D. 373; *Metford* v. *Edwards*, [1915] 1 K. B. 172; *A.-G.* v. *Swan*, [1922] 1 K. B. 682.

Delegation to committees.

The members may always delegate their powers in managing the business of the club to committees within the provisions of the rules.

II. UNINCORPORATED PROPRIETARY CLUBS.

An unincorporated proprietary club exists where its members, in consideration of payment of entrance fees and subscriptions, are entitled to the use and benefit of club property, and to whatever privileges they obtained by the terms of the contract between themselves and the owner of the club, who, as owner, is entitled to, and usually does, conduct the club as a business with a view to profit.

Members make use of the club property as licensees, and if interfered with wrongfully in such legitimate uses, they

may sue the proprietor for damages for breach of contract, and they may be sued by him for provisions supplied in the same way as any vendor may sue his purchaser for the price of goods sold and delivered.

Proprietor's property in club goods—distress.

Where a proprietor of a club for the purpose of selling pictures—exhibited them at the club: *Held*, that he did not carry on the business of a picture dealer so as to exempt the pictures so exhibited by him in club premises from distress for rent due in respect of such premises (*h*). Members may also delegate powers of management to committees in same way as members of an unincorporated members' club.

(*h*) *Challoner* v. *Robinson*, [1908] 1 Ch. 49, C. A. *per* COZENS-HARDY, M.R., at p. 60.

III. CLUBS INCORPORATED UNDER THE COMPANIES ACTS, 1902—1908.

Any unincorporated members' club, while still retaining, as between the members *inter se* the homely atmosphere of such an association, may by being incorporated and registered as a company under the above statutes, obtain the distinction and advantage of suing and being sued as a legal entity, apart altogether from its individual members. Any proprietary club may also be owned by a limited company instead of a private individual.

It is scarcely necessary to interpolate here that it would be outside the scope of this book to advert in any detail to the multitudinous provisions of the Companies Acts, and therefore the

writer can only recommend any reader seeking enlightenment or information upon abstruse points of Company Law to refer to any of the admirable works now in existence which deal specifically with that subject.

Constitution.

An incorporated club is limited, as is any company, by share or by guarantee (*i*). Where the company is limited by shares, every club member may be a shareholder and every shareholder a club member. The company itself as an entity cannot, however, acquire the shares (*k*).

The most usual method is to register the club as a company limited by guarantee, the members *pro tem.* constituting the company.

(*i*) Companies Act, 1862, s. 7.

(*k*) *Trevor* v. *Whitworth* (1887), 12 App. Cas. 409.

NOTE.—The Act of 1908 consolidates and codifies the previous legislation dealing with companies.

Liability of members.

A member's liability in respect of debts of the company only ensues upon its winding up, and then is limited to the amount unpaid upon his shares or upon the amount of his guarantee as the case may be (*l*).

Board of Trade may dispense with "Limited."

The Board of Trade has power on application to dispense with the word "Limited" where a members' club is incorporated without a view to profit,

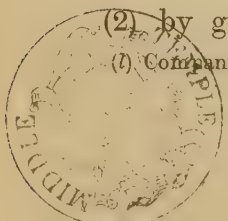
And substitute "club" for "company."

and to allow use of the word "club" in substitution for "company" (*m*).

Memo. and articles of association.

Whether an association is limited by shares or by guarantee, the objects of the club are set out in the memorandum of association. When limited (1) by shares, the articles of association partly supplant the ordinary club rules, which may be supplemented by bye-laws; (2) by guarantee, the rules for the

(*l*) Companies Act, 1862, s. 38. (*m*) *Ibid.*, s. 23.



internal regulation of the club are usually added to the memorandum of association, and so form the regulations of the company.

Incorporated proprietary club.

In the case of an incorporated proprietary club, it is important to recollect that the company is as distinct from the club as is the club from the proprietor in the case of an unincorporated proprietary club, and the rules and regulations of the company solely regulate the relationship between members *inter se*.

IV. WORKING MEN'S CLUB REGISTERED UNDER THE FRIENDLY SOCIETIES ACT, 1896.

In dealing generally with these societies, here it is only expedient to refer to the various statutory provisions which give rise to the promotion and conduct of such clubs.

Definition. They are societies for purpose of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation (*n*).

They may be registered without payment of any fee (*o*), after which the statutory provisions relating to Friendly Societies generally apply. Every club so registered must have a registered office (*p*), must appoint one or more trustees (*q*), must annually submit its accounts for audit either to a public auditor or to two or more persons appointed under the club rules (*r*), and must send annual returns of its receipts and expenditure, funds, and effects to Registrar of Friendly Societies (*s*), and supply a copy thereof to any member

(*n*) Friendly Societies Act, 1896, s. 8 (4).
(*o*) *Ibid.*, s. 96. (*p*) *Ibid.*, s. 24.
(*q*) *Ibid.*, s. 25. (*r*) *Ibid.*, ss. 26—30.
(*s*) *Ibid.*, s. 27.

"gratis" on application (*t*). Any club so registered may, by special resolution (*a*) duly registered, (*b*) convert itself into a company under the Companies Acts, 1862—1908.

Such clubs need not be registered, and if not, they retain their status as unincorporated members' or proprietary clubs, as the case may be. However, if registered, they acquire by statute certain privileges and advantages of which the following are the most important: — Exemption from stamp duty upon receipts, and certain other documents (*c*); certain facilities for investment of funds (*d*); priority of claims against estates of officers who die, become bankrupt, or have execution

Registration optional.

(*t*) Friendly Societies Act, 1896, s. 39.
(*a*) *Ibid.*, s. 74. (*b*) *Ibid.*, s. 75.
(*c*) *Ibid.*, s. 33. (*d*) *Ibid.*, s. 44.

levied against them (*e*) ; and devolution of property on death, resignation or removal of a trustee (*f*). Any member is of right entitled to inspect books at reasonable hours (*g*). Machinery is provided for the settlement of disputes (*h*), and for the dissolution of the club (*i*).

Before passing from the subject of Working Men's Clubs it is convenient here to set out what rules are essential to their existence in accordance with the statute which sanctions their creation.

RULES OF WORKING MEN'S CLUBS.

Rules of registered working men's clubs.

They must specify the name and registered office of the club, and the object for which it is established, and must provide for the following matters.

(*e*) Friendly Societies Act, 1896. s. 35.
(*f*) *Ibid.*, s. 50.
(*g*) *Ibid.*, s. 40.
(*h*) *Ibid.*, s. 68.
(*i*) *Ibid.*, ss. 78—83.

The terms of admission of members, and the result of non-payment of subscriptions; the mode of holding meetings, the right of voting, the manner of making, altering, or rescinding rules; the appointment and removal of a committee of management, of treasurer and other officers, and of trustees; the keeping of accounts and their audit at least annually, annual returns to the Registrar of Friendly Societies of all receipts, funds, and expenditure; number of members; inspection of books by members; and settlement of disputes (*k*).

Copies of the rules must be sent to the Registrar of Friendly Societies on application for Registration (*l*), and must be sent to any member on demand

(*k*) Friendly Societies Act, 1896, s. 9 (3), and Schedule I.

(*l*) *Ibid.*, s. 9 (2).

on payment of not more than one shilling (*m*). No alteration or amendment of the rules is valid till it is registered (*n*).

V. SHOP CLUBS.

Definition.

By statute a shop club, or thrift fund, is defined as any club or society for providing benefits to workmen in connection with a workshop, factory, dock, shop, or warehouse (*o*).

No compulsion to join.

Under penalty of a fine (*p*), an employer is not permitted to make it a condition of employment that any workman shall join a shop club unless it is registered under the Friendly Societies Act, 1896, or certified by the Registrar of Friendly Societies (*q*), or

(*m*) Friendly Societies Act, 1896, s. 38.
(*n*) *Ibid.*, s. 13. (*o*) Shop Clubs Act, 1902, s. 7.
(*p*) *Ibid.*, s. 4. (*q*) *Ibid.*, s. 2.

to make it a condition of employment that any workman shall discontinue his membership of any Friendly Society, or not become a member of any such society other than the shop club (*r*).

Except railway employees.

Railway employers, however, can make it a condition of employment that their workmen join a superannuation or insurance fund for the benefit of the employees, to which fund the company (employers) also contribute (*s*).

Certification.

Before a shop club can be certified under the statute appertaining thereto, the Registrar of Friendly Societies must be satisfied that it affords to workmen benefits of a substantial kind in the form of benefits emanating from the employers as well as from the workmen; that it is of a permanent character and not merely a society

(*r*) Shop Clubs Act, 1902, s. 3. (*s*) *Ibid.*, s. 5.

which divides its funds at certain periods; and that if a workman on leaving or being dismissed from his employment, wishes to continue his membership he may do so—but while out of employment he is prohibited from voting or taking part in the management of the club (*t*). If he wishes to terminate his membership he is entitled to be paid out his share in the club funds—to be ascertained by actuarial calculation (*a*).

Rules of shop clubs.

In addition to the matters mentioned in the rules of working men's clubs—a certified shop club rules must also provide for: the purposes for which the funds are applicable, the condition under which any member is entitled to any benefit, the fines to be imposed

(*t*) Shop Clubs Act, 1902, s. 6.
(*a*) *Ibid.*, s. 2.

upon any member and the forfeitures: the investment of the funds; keeping a separate account of all monies received or paid on account of any particular or benefit assured for which a separate table of contributions payable shall have been adopted, and a separate account of the expense of management and contributions on account thereof; a valuation once at least in every five years of the assets and liabilities, including the estimated risks and contributions; the voluntary dissolution of the club by consent of not less than five-sixths in value of the persons contributing to its funds, and if any person for the time being entitled to any benefit from its funds, unless his claim be first satisfied or adequately provided for; and the right of one-fifth of the total number of members, or of

100 members in the case of a society of 1,000, and not exceeding 10,000, or of 500 in the case of a society exceeding 10,000 members, to apply to the Chief Registrar of Friendly Societies for an investigation of the affairs of the society or for winding up same (*b*).

(*b*) Shop Clubs Act, 1902, s. 3, and Schedule.

NOTE.—Societies registered under the Industrial and Provident Societies Acts, 1893–1913. Since the end of the war vast numbers of ex-service men's societies or clubs have sprung up throughout the country under the provisions of these statutes, under which they derive many advantages, of which the principal are the following:—facilities for raising capital, *e.g.* for the purchase of a club-house, less restrictions on expenditure than are permitted under the Friendly Societies Act, 1896, no necessity for appointment of trustees, capacity to act under a common seal in the same manner as a limited company, suing and being sued in their own name and by their secretary, to whom no personal liability attaches, freedom from Income Tax under Schedule D, no personal liability of members for the acts of the Society, the share interest of a member may be as low as one shilling but may not exceed £200, provision for bringing proceedings before Courts of Summary Jurisdiction against defaulters, and various other beneficial provisions, for particulars of which the reader is referred to the statutes which are set out in the Appendix in a somewhat truncated form for convenient reference.

CHAPTER II.

JURISDICTION OF THE COURTS AND EXPULSION OF MEMBERS.

THE writer has thought it well to deal with both these matters in one chapter as the majority of the decisions relevant to the rights of members expelled from clubs also deal with the jurisdiction of the courts to intervene, and so it is hoped to avoid overlapping and repetition.

Right of property foundation of jurisdiction.

The sole foundation of the jurisdiction of a court of Equity to interfere at the instance of a member improperly expelled, in order to reinstate him, is the *right of property* vested in the member, of which he is unjustly deprived by the unlawful expulsion. "There is no jurisdiction in the Courts to decide upon the right of persons to associate together

when the association possesses no property. Persons do associate without any property in common at all. A dozen people may agree to meet in each other's houses and play whist for a certain time and if eleven of them refuse to associate any further with the twelfth, there is no jurisdiction in the court to interfere " (*a*).

So, where in an action by some member of a Freemason's lodge against others for delivery of regalia, papers, etc.: *Held*, Court had jurisdiction to order the delivery of a chattel (*b*).

(*a*) *Per* JESSEL, M.R., *Rigby* v. *Connol* (1880), 14 Ch. D. 487. See also *Baird* v. *Wells* (1890), 44 Ch. D. 661; followed, *Kelly* v. *National Society of Operative Printers* (1915), 113 L. T. 1055; and explained further in *Braithwaite* v. *Amalgamated Society of Carpenters*, [1921] 2 Ch. 399.

NOTE.—See also dicta of MOULTON, L.J., in *Osborne* v. *Amal. Soc. of Rly. Servants*, [1911] 1 Ch. 562.

(*b*) *Lloyd* v. *Loaring* (1802), 6 Ves. 773. See also *Millican* v. *Sulivan* (1888), 4 T. L. R. 203, C. A.

In dealing with expulsion of members and the Court's jurisdiction to intervene where a right of property exists—it is important to note that there is no *implied* power to expel any member of a club, however great the provocation.

Rules must expressly provide for expulsion.

There must be an *express* provision in the rules to that effect—nor can the existing rules be altered to create such a power except with the consent of every member—unless such rules provide for their own alteration. So where there was no provision in the rules of a club by which the rules might be altered so as to increase the amount of the annual subscriptions—and a majority of members present at a general meeting—raised the amount of the subscription so as to bind the existing members; the Court interfered by injunction to restrain the expulsion of

a dissenting member for refusing to pay the increased subscription (*c*). But where it is expressly provided that the rule may be altered or new rules made —a new rule providing for the expulsion of any member whose conduct is injurious to the interests of the club, is *intra vires* (*d*).

There are certain well-defined conditions that must be complied with before a member can be lawfully expelled from a club—and if any of these conditions are unfulfilled the Courts will declare the purported expulsion to be void.

RULES.

1. A power of expulsion must be exercised with meticulous attention

(*c*) *Harrington* v. *Sendall*, [1903] 1 Ch. 921.

(*d*) *Finch* v. *Oake*, [1896] 1 Ch. 409, *Dawkins* v. *Antrobus* (1881), 17 Ch. D. 615.

paid to the rules by virtue of which it is created and if any single formality is omitted the purported expulsion is of no effect (*e*), *e.g.*, where a certain number of days' notice should be given to consider the question of the expulsion—if the notice is a day late—the expulsion is annulled (*f*); where one member of the committee was not summoned and the notice convening same did not set out with sufficient particularity the objects of the meeting: *Held*, the attempted expulsion was void and that plaintiff was still entitled to membership (*g*). A notice, however, posted to the registered address of a

(*e*) *Innes* v. *Wylie* (1844), 1 Car. & Kir. 257; *Young* v. *Ladies' Imperial Club*, [1920] 2 K. B. 523.

(*f*) *Labouchère* v. *Wharncliffe* (1879), 13 Ch. D. 346; and see *James* v. *Chartered Accountants' Institute*, (1907) 98 L. T. 225, C. A.

(*g*) *Young* v. *Ladies' Imperial Club*, *supra*.

member proposed for expulsion, was sufficient—although, having changed his address and not having notified the change, he never received the notice (*h*).

Expulsion must be *bonâ fide*.

2. Expulsion must be *bonâ fide* and exercised in the interests of the club and not from any indirect or improper motive.

So where a declaration was sought that the purported expulsion of the plaintiff was void, and an offer was made to readmit him on staying the action and paying the costs, a resolution (which was similar to a previous abortive resolution), but which was passed after the offer was made which plaintiff declined, was held to be void (*i*).

(*h*) *James* v. *Chartered Accountants' Institute*, *supra*.
(*i*) *Tantussi* v. *Molli* (1886), 2 T. L. R. 731.

3. The power of expulsion must be exercised also according to the principles of natural justice—and unless such a power is on the face of the rules absolute (*k*)—those exercising it (*e.g.*, a club committee) are in a quasi-judicial position—and must give notice to the offending member who must have every reasonable opportunity of defending himself (*l*), and those adjudicating ought not to act merely upon *ex parte* evidence (*m*). Whether their opinion is just or unjust is immaterial (*n*).

According to principles of natural justice.

Notice to be given to member.

Member must have opportunity to be heard.

Not to be decided *ex parte*.

Where the rules empower committee

(*k*) *Wood* v. *Wood* (1874), L. R. 9 Exch. 190—196, and *Russell* v. *Russell* (1880), 14 Ch. D. 471.

(*l*) *Fisher* v. *Keane* (1878), 1 Ch. D. 353; *Gray* v. *Allison* (1909), 25 T. L. R. 531; *D'Arcy* v. *Adamson* (1913), 29 T. L. R. 367.

(*m*) *Fisher* v. *Keane*, *supra*.

(*n*) *Richardson-Gardner* v. *Freemantle* (1870), 24 L. T. 81.

to expel a member for conduct injurious to the interests of the club—the committee must only act—having had what is known as "reasonable and probable cause;" and for the purpose of arriving at the same justly, it is necessary to examine what the interest and objects of the club really are. So in a members' political club which was purely Conservative in its politics, if a member chose to register his vote for the Liberal party—the committee would be justified in expelling him if the sole *raison d'être* of the club was the furtherance of the Conservative cause. *Contra*, it would not amount to reasonable and probable cause if the objects of the club were mainly social (*o*).

Where, then, all the above-mentioned

(*o*) *Hopkinson* v. *Marquis of Exeter* (1867), L. R. 5 Eq. 63.

conditions have been fulfilled, and even though a court of justice might hold that the members or committee have come to a wrong conclusion, it will not interfere with the discretion of those adjudicating (*p*).

Stock Exchange committees, and allied bodies.

Similar considerations apply to the expulsion of members of the Stock Exchange (and allied societies) by a committee of the Stock Exchange which is duly authorised to decide upon the proposed election or re-election of members according to the rules. It has been decided that the rules of the Stock Exchange which give authority to the committee, form a contract binding upon every member, and in the absence of evidence that they have

(*p*) *Hopkinson* v. *Marquis of Exeter, supra; Dawkins* v. *Antrobus, supra; Lambert* v. *Addison* (1882), 46 L. T. 20; *Seaton* v. *Gould* (1889), 5 T. L. R. 309.

Affected by similar considerations.

acted unfairly or dishonestly, their discretion is absolute and cannot be interfered with by the Courts (*q*).

And again where the refusal to re-elect a member of the Stock Exchange is honest and *bonâ fide*, and where the procedure adopted is not contrary to natural justice, the exercise of the committee's discretion is an ordinary act of management and neither judicial nor quasi-judicial (*r*).

Acts of management.

Onus of Proof.

In all cases the onus of establishing *mala fides* lies upon the person who alleges it (*s*).

(*q*) *Cassel* v. *Inglis*, [1916] 2 Ch. 211.

NOTE.—*Semble:* Where a similar tribunal with like powers chooses to give a reason for its action—the Court may inquire into the sufficiency of that reason. In the writer's opinion this is doubtful, and would seem to conflict with the effect of other decisions.

(*r*) *Weinberger* v. *Inglis* (No. 2), [1918] 1 Ch. 517, *per* SWINFEN EADY, L.J.

(*s*) *Dawkins* v. *Antrobus, supra; Lambert* v. *Addison, supra.*

REMEDIES FOR EXPULSION.

Members' club.

By action against the committee or against the trustees and committee for a declaration that the expulsion is void —that plaintiff is still a member, and for an injunction to restrain the committee and their servants or agents from preventing plaintiff resuming the rights and privileges of membership.

Proprietary club.

As in the case of all associations which do not, as such, own any property (*t*), there is no foundation for the equitable jurisdiction of the Court, and, *semble*, the sole remedy is against the proprietor for damages for breach of contract (*a*).

Incorporated clubs.

The Earl of Halsbury, in his Laws of England, gives the opinion that if an expelled member is also a member or shareholder in the company he may

(*t*) *Rigby* v. *Connol, supra ; Baird* v. *Wells, supra.*
(*a*) *Baird* v. *Wells, supra.*

be entitled to the same remedies as a member of an unincorporated club; and if not apparently his only remedy is an action for damages against the company.

Working men's club —unregistered.

When a working men's club is not registered, the remedies are the same as in the case of an unincorporated members or proprietary club.

Registered.

Where registered, the rules alone give the remedy to the expelled member, the decision binding all parties without appeal, and same can be enforced through the County Court (*b*), or, if rules do not expressly forbid it, the Chief Registrar of Friendly Societies may decide the issue, and his decision may be enforced likewise (*c*).

(*b*) *R.* v. *Catley* (1887), 19 Q. B. D. 491; and Friendly Societies Act, 1896, s. 68 (1).

(*c*) Friendly Societies Act, 1896, s. 68 (2) and (4).

Where the rules direct that the matter be referred to magistrates, the reference may be to a court of summary jurisdiction, or, by consent to the County Court (*d*), and where there is no mention about the procedure to be adopted in the case of disputes, or where no decision has been promulgated after the lapse of forty days from the date of the application for a reference under the rules, the aggrieved member may apply to the County Court or to a Court of Summary Jurisdiction to hear and determine the matter (*e*).

Jurisdiction of magistrates and County Court.

(*d*) Friendly Societies Act, 1896, s. 68 (5).
(*e*) *Ibid.*, s. 68 (6).

CHAPTER III.

CONSTITUTION AND INTERNAL ARRANGEMENTS.

SECT. 1. RULES.

Rules generally.

ALL clubs are governed by their rules, and these having set out specifically the objects and purposes for which club is constituted, should provide for all the needs and contingencies arising from the admission of members, their conduct whilst they remain members, their resignation and expulsion, the management of all club affairs, meetings, notices, etc., and all matters expedient for good government and also, as we have already seen (p. 24, notes (*c*) and (*d*)), they should not omit to provide for their own alteration.

Rules part of contract.

The rules form part of the contract between the members *inter se* in the case of a members' club and between the members and the proprietors in the case of a proprietary club (*a*).

Members' knowledge of Rules —when presumed.

If the rules are accessible to the members, even though kept in a book retained by the master of the club, every member must be taken to be acquainted with their contents (*b*).

I have already dealt with the statutory provisions, concerning what the Rules of Working Men's Club must contain under the Friendly Societies Act, 1896, p. 15, *supra ;* and also the essential contents of Shop Club Rules under the Shop Clubs Act, 1902, p. 18, *supra ;* to which the reader is referred.

(*a*) *Lytellton* v. *Blackburne* (1875), 45 L. J. (Ch.) 219 ; *Innes* v. *Wylie, supra* (1844), 1 Car. & Kir. 257.

(*b*) *Raggett* v. *Musgrave* (1827), 2 C. & P. 556 (N. P.).

SECT. 2. ALTERATION OF RULES.

1. *Unincorporated Members' Club.*—As we have observed, *supra*, p. 24, the rules must provide expressly for their own alteration to be effectual, unless by consent of every member (*c*).

2. *Incorporated Club.*—In this case there is no power to alter rules which do not expressly provide for their own alteration, except such as is given by the articles of association.

Amendments must be registered.

3. *Working Men's Clubs.*—No amendment is valid till it has been registered with the Registrar of Friendly Societies, for which purpose copies of the amendment, signed by three members and the secretary, must be sent to the Registrar, who—if the amendment is not contrary to law—will issue an acknowledgment of

(*c*) *Harrington* v. *Sendall*, [1903] 1 Ch. 921.

registration, which is conclusive evidence that such amendment has been registered (*d*).

Bye-laws generally.

Where a committee is authorised by the club rules to have and to exercise full power as to the management of the club and election of members, and power to publish such bye-laws as they deemed expedient for such purposes, a bye-law that such retired members be readmitted on payment of back subscriptions was held to be valid (*e*).

Again where the rules of a club expressly provided for their alteration by the resolution of a prescribed majority, and the alteration was confined to the management of the affairs of the club, even though the resolution went so far as to discontinue one of the

(*d*) Friendly Societies Act, 1896, s. 13.
(*e*) *Lambert* v. *Addison* (1882), 46 L. T. 20.

original several purposes or objects for the pursuance of which the club was founded: *Held*, that such alteration was *intra vires* and valid (*f*).

Generally —alteration is valid if within the rules—*bonâ fide*—and not incompatible with fundamental objects.

Again, where, in the case of a voluntary association to provide for the support of such of their members as may be incapacitated for their work, there is a power to alter the rules of the association, such a power is *primâ facie* valid, and if used *bonâ fide*, it has the effect of making all the existing members bound by the altered rules, provided that the alteration does not go to the foundation of the association and is not incompatible with its fundamental objects (*g*).

Special notice required for alteration of rules.

Where alteration of rules is proposed special notice of the general meeting

(*f*) *Thellusson* v. *Valentia*, [1907] 2 Ch. 1.
(*g*) *Morgan* v. *Driscoll* (1922), 38 T. L. R. 251.

should be given to all members. Alteration of rules is not included in such words as "general purposes," or "general business" (*h*).

Service of notices.

Where not prescribed by rules, the committee has inherent power to say how notices should be given on each particular occasion (*i*). In matters affecting only habitual users of the club notices posted in usual place on club premises would be sufficient. But where a change in the general conduct of the club is concerned—or dealing with a particular member—circular notices should be given to all who do not daily or habitually use the club (*k*).

(*h*) *Harrington* v. *Sendall*, [1903] 1 Ch. 921, *per* JOYCE, J., at p. 926.

(*i*) *Labouchère* v. *Earl of Wharncliffe* (1879), 13 Ch. D. 346, *per* JESSEL, M.R.

(*k*) Earl of Halsbury's Laws of England, Vol IV., "Clubs," p. 414, and *ibid.*, p. 353.

SECT. 3. ADMISSION AND RESIGNATION OF MEMBERS.

Most clubs provide for the proposal and seconding of a candidate for membership, and he may be balloted for and elected either by the committee appointed *ad rem* or by all the members as the rules may provide.

Election.

On election the secretary should notify the candidate of the fact of his election, send him a copy of the rules, and ask for the entrance fee and subscription for the current year.

On being notified of his election, however, the member is not bound to accept his membership, and he may refuse it, as there is not a binding contract till he pays his entrance fee and subscription (*l*).

(*l*) New University Club (Duty on Estate), 1887, 18 Q. B. D. 720—727.

Resignation.

Unincorporated members' club.

Unless the rules otherwise provide, a member can, at any time, by communicating to the secretary, resign his membership (*m*). After the letter of resignation has been sent in and received, it cannot be revoked (*n*), and the member can only be reinstated by election (*o*), unless the club rules have a bye-law to the contrary (*p*). His letter of resignation does not, therefore, require any letter of acceptance from the secretary (*q*).

Proprietary club.

Resignation depends entirely upon the terms of the contract between the members and the proprietor.

(*m*) *Finch* v. *Oake*, [1896] 1 Ch. 409.

(*n*) *Ibid.*, *Dawkins* v. *Antrobus* (1881), 17 Ch. D. 615.

(*o*) *Finch* v. *Oake*, *supra.*

(*p*) *Lambert* v. *Addison* (1882), 46 L. T. 20.

(*q*) *Finch* v. *Oake* ; *Dawkins* v. *Antrobus*, *supra.*

Incorporated club.

Depends upon the rules of the club and the regulations governing the company.

SECT. 4. ENTRANCE FEES AND SUBSCRIPTIONS.

Liability.

As has been observed no contract of membership is complete till entrance fees and subscription have been paid (*supra*, p. 40), and so a person cannot be sued for any sum due under the rules till his contract of membership is complete. After completion a member is liable for subscriptions till he has duly resigned his membership according to the rules, or been expelled from the club (*r*). No action, however, lies for the recovery of subscriptions payable

(*r*) *Raggatt* v. *Bishop*, *supra* (1826), 2 C. & P. 343; *Labouchère* v. *Wharncliffe* (1879), 13 Ch. D. 346, *supra*.

by members of a registered working men's club (*s*). Working-men's clubs.

Where the rules provide for payment of subscription on the first of a month or during that month, even though they also provide that no member shall be qualified to vote, if his current subscription is unpaid ; a member who has not paid, is entitled to vote and to all other privileges of membership up to the end of the last day of the month (*t*). Where subscriptions in arrear.

SECT. 5. MANAGEMENT.

A committee is usually empowered within the rules to manage and conduct the affairs of the club, and it is solely upon the rules that their power to bind the members, as between themselves, Committees.

(*s*) Friendly Societies Act, 1896, s. 23.
(*t*) *Innes* v. *Wylie* (1844), 1 Car. & Kir. 257.

or as regards contracts between tradesmen and others, depends (*a*).

All committee members must join in the exercise of every power unless the rules make provision for a number to form a *quorum* (*b*).

In unincorporated members' clubs trustees are usually empowered within the rules to invest the club funds at their own discretion, or according to the committee's directions, and they hold the property and assets of the club in trust for the members *pro tem.*

Registered working men's clubs. Trustees.

Every registered working men's club must have one or more trustees appointed by a resolution of the

(*a*) As to construction of a power in committee to make bye-laws, *vide Lambert* v. *Addison* (1882), 46 L. T. 20.

(*b*) *Brown* v. *Andrew* (1849), 18 L. J. (Q. B.) 153; *Re Liverpool Household Stores Association, Ltd.* (1890), 59 L. J. (Ch.) 616.

majority of the members present at a general meeting (*c*).

A copy of such resolution signed by the trustees so appointed, and by the secretary, must be sent to the Registrar of Friendly Societies, and the same person may not be secretary or treasurer as well as trustee (*d*).

All club property whether acquired before or after registration vests in the trustees, for the time being, for the use and benefit of the members (*e*), and the trustees may, with the consent of the committee or of a majority of the members present and entitled to vote in general meeting, invest the funds of the club in the purchase of land, or in erection or alteration of club

(*c*) Friendly Societies Act, 1896, s. 25 (1) and (2).
(*d*) *Ibid.*, s. 25, (3) and (4).
(*e*) *Ibid.*, s. 49 (1).

buildings, or in certain other specified investments (*f*).

Trustees.

Proprietary club.

Incorporated club.

Trustees are not necessary in the case of a proprietary club, or of a club incorporated under the Companies Acts, 1862—1908.

Lien of trustees.

The trustees of a club have a lien on the trust property vested in them for all liabilities properly incurred by them on behalf of the club.

Lien of committee.

So also, where, by a resolution at a general meeting, the managing committee of a club were authorised to raise £1,000 for the purpose of improving and adding to the club premises and providing fittings and furniture, and the committee, being unable to raise the money on mortgage, raised it on the security of a guarantee given by certain members of the committee,

(*f*) Friendly Societies Act, 1896, s. 44.

which was afterwards approved at the general meeting held annually, the money being duly spent upon the said purposes: *Held*, the members of the committee who had guaranteed the loan and were subsequently compelled to pay it back, had a lien upon the club premises so added to and improved and on the other property acquired by the borrowed money and were entitled to have the property sold in default of repayment (*g*).

The rules of the club alone, however, can give any right to the trustees, or to

Indemnity must be expressed in rules.

(*g*) *Minnitt* v. (*Lord*) *Talbot* (1876), L. R. 1 Ir. 143. On being sold the property did not realise sufficient to pay the debt, and it was further ordered that the plaintiffs were entitled to be indemnified by the other members of the club (1881), L. R. 7 Ir. 407. This, however, is no longer the law; see *Wise* v. *Perpetual Trustee Co.*, [1903] A. C. 139, P. C.; and the Earl of Halsbury on Clubs, Laws of England, Vol. IV., p. 420.

the committee, to be indemnified by individual members of the club against liabilities incurred by them on behalf of the club (*h*). As to the right to contribution between trustees or committeemen where some of them have incurred debts for the club, the following case is of such importance as to deserve the narration of the facts and decision *in extenso*. A. and B. and twenty-four others were members of the committee of management of the club. The club being in debt, a resolution was passed at a general meeting, at which B. was not present, on June 1, 1852, to the effect that a loan of £4,000 was necessary to free the society from outstanding debts, and that the committee

Where indemnity occurs, right of contribution *inter se*.

(*h*) *Wise* v. *Perpetual Trustee Co.*, [1903] A. C. 139, P. C.; *and Wylie* v. *Carlyon*, [1922] 1 Ch. 51.

be empowered to raise that sum on the guarantee of the society. At a committee meeting on June 15, at which B. was present, the above resolution was discussed; and at a second general meeting of the society held the same day, the resolution for the loan was confirmed. At a committee meeting on August 3, in B.'s absence, the terms of a loan of £4,000 from "C." Bank was arranged, and the club credited with the money on the 5th, their account being then transferred from another to "C." Bank. On August 12, the signatures of B. and other committeemen, who were authorised to sign cheques, were transferred to "C." Bank, and B. and others drew cheques on this account to meet current expenses. "C." Bank afterwards sued A. to recover balance due to them from the

club, and recovered judgment against A. for a large sum, which he had paid. *Held*, (1) There being evidence of his previous assent to and his subsequent ratification of the committee's act in obtaining the loan, B. was liable to contribution; and (2) the proceedings at the meetings at which he was not present were admissible in evidence against him in an action brought by A. to enforce such contribution (*i*).

(*i*) *Mountcashell* v. *Barber* (1853), 14 C. B. 53; 23 L. J. C. P. 43.

NOTE.—As to ascertainment of personal liability of members in cases of indemnity and third-party procedure, see *Hall* v. *Sim* (1894), 10 T. L. R. 463, D. C.

CHAPTER IV.

RIGHTS AND LIABILITIES OF CLUBS AND MEMBERS.

SECT. 1. IN CONTRACT.

Unincorporated members clubs.

It is generally and rightly understood that persons by joining such a club do not intend to incur any liability to pay to the club funds, or to the trustees or any one else, any sums beyond the subscriptions payable according to the rules, as long as they remain members (*a*). Disputes, however, *in rerum natura* frequently arise as to who should pay for goods supplied or for work done for a club, or indeed upon any contracts expressed to be made on its behalf.

(*a*) *Wise* v. *Perpetual Trustee Co.*, [1903] A. C. 139, P. C.

Liability depends upon principles of agency.

The answer to any such problem is to be found in the application of the ordinary legal principles of agency, and the law is now clearly settled that no member of a club is liable to a creditor except in so far as he has assented to the contract in respect of which such liability has arisen (*b*). That is to say that the supplier of goods, or such other contractor, must establish in evidence, if he hopes to succeed in his action, that the defendants, either by themselves, or by their servants or agents, contracted to pay for the goods supplied or the work done as the case may be. So where the rules provided *inter alia* for a committee to manage the club affairs and for the daily payment of their club bills by the members, it was

(*b*) *St. James' Club* (1852), 2 De G. M. & G. 383, *per* Lord St. Leonards, C.

held that members of the club, merely as such, were not liable for debts incurred by the committee for work done or goods supplied for the use of the club: (1) as the committee had no authority to pledge the personal credit of the members; (2) a member who had been nominated on the committee but had never accepted his nomination, nor acted on the committee, was not liable to be sued by tradesmen for goods supplied to the club (*c*).

Power to pledge credit must be given by rules alone.

The rules alone, then, can empower, expressly or impliedly, the trustees or the committee of management, or indeed any servant or official of the club, to pledge the credit of the members

(*c*) *Flemyng* v. *Hector* (1836), 2 M. & W. 172, *per* PARKE, B., at p. 183; *Andrews* v. *Alexander's Case* (1869), L. R. 8 Eq. 176, *per* JAMES, V.-C., at p. 195; *Hawke* v. *Cole* (1890), 62 L. T. 658; *Draper* v. *Manvers* (1892), 9 T. L. R. 73.

generally, and in the absence of such express or implied authorisation, no such official or body can bind the members personally. So, where the rules of a coal club provided that the members, on making certain weekly payments to the secretary, should be entitled to the delivery of certain quantities of coal, and the contracts for the purchase of coal were to be made by the secretary with dealers selected by the members, the coal, after each delivery, to be paid for by the treasurer of the club on receipt of an order signed by the secretary and chairman, it was held that, contracts having been made by the secretary, and coal having been delivered thereunder, for which the treasurers, owing to the secretary's default, had not sufficient funds in hand to pay, the

Secretary authorised by rules to pledge credit.

members of the club were liable (*d*). Here it is important to observe that the secretary had power, under the rules, to make the contract; but had no control over the club funds out of which such debts were to be met.

Goods ordered by one member on behalf of all.

So, on similar reasoning, where goods are ordered by one member of a club for the benefit of all, every member who concurs in the order or who subsequently assents to it is held liable—although in fact the member who actually ordered the goods is treated as the debtor in the merchant's books, and the bills are sent to him, unless such other members can establish that the plaintiff intended to give credit to the member ordering the goods alone (*e*).

Effect of subsequent assent and concurrence by others.

(*d*) *Cockerell* v. *Aucompte* (1857), 2 C. B. (N.S.) 440.

(*e*) *Delaunay* v. *Strickland* (1818), 2 Stark, 416.

Expenses incurred by member in professional capacity.

Again, where a solicitor was a member of a club and an *ex officio* member of the committee and was employed under the rules by a resolution of the committee to take proceedings in Chancery for the winding up of the affairs of the club: *Held*, he was entitled to sue a member of the committee by whom he was employed to recover the amount of his bill for such business (*f*).

Goods supplied to club as a whole—personal credit of committeeman not pledged.

An individual member of the committee of management, not having in any way pledged his personal credit, is not personally liable for goods ordered for and supplied to the club as a whole. But apparently it is otherwise if the goods are supplied on the personal credit of individual members of the

(*f*) *Lee* v. *Bissett* (1856), 26 L. T. O. S. 204.

club instead of on the credit of the club as a body (*g*).

No power to pledge credit in committee of management as such.

Members of the committee of management have no power, as such, to pledge the credit of other members of the committee; and even where, as is common to many club rules, the committee is to have full power to deal with and conduct the domestic and other arrangements of the club; it is not thereby empowered to pledge the credit of other members by borrowing on debentures or otherwise (*h*).

So where in an action against defendants to recover the price of wine furnished to a subscription club, of the committee of which the defendants were members, it was proved that the wine was ordered by the house-steward,

(*g*) *Overton* v. *Hewett* (1886), 3 T. L. R. 246.
(*h*) *St. James' Club* (1852), 2 De G. M. & G. 383.

who stated that he had authority to do so from the members of the committee. It was not shown that the defendants had either personally interfered in the ordering of the wine, or been present at any meeting of the committee when authority to order the wine was given, but merely that they were members of the general body of the committee: *Held*, In these circumstances, the question of fact for the jury was not, whether the defendants by their course of dealing had held themselves out as personally responsible to plaintiff, but whether they had individually authorised the making of the contract in the ordering of the wine, and that the tradesman was not entitled to recover, without proving either that defendants were privy to the contract or that the dealing on credit was in

No liability on committeeman when goods ordered for use of club in absence of privity of contract being established.

furtherance of the common purposes and objects of the club (*i*).

Goods supplied to mess by order of wine caterer.

Similar considerations apply in case of goods being supplied to officers' messes or kindred bodies. It has been held that an individual member of a mess, who has not in any way pledged the credit of the mess, is not personally liable for goods supplied to the mess by order of the wine caterer (*j*).

Order of mess secretary: liability of commanding officer.

In a more recent case, where plaintiff supplied goods to the regimental mess of which defendant at the time was commanding officer, and the order for the goods was given by the secretary to the mess committee, and plaintiff sued defendant for the price, alleging

(*i*) *Todd* v. *Emley* (1841), 7 M. & W. 427, and (New Trial) 8 M. & W. 505.

(*j*) *Hawke* v. *Cole* (1890), 62 L. T. 658, D. C.

that under King's Regulations he was liable, or that he was liable as principal for the acts of his mess secretary: *Held*, (1) the K. R. did not create any liability between the C.O. and tradesmen; (2) as defendant neither gave nor authorised the order and plaintiff did not give defendant credit, the action failed (*k*).

Committee generally must pay for goods out of funds in hand.

The general principle in all clubs is that where the committee of management have control over the domestic and other arrangements of the club, in the absence of a plain indication of a contrary intention in the rules, they are only permitted to purchase and pay for goods out of the funds in hand; though perhaps in the case of wages of hired servants it may be different, as

(*k*) *Lascelles* v. *Rathbun* (1919), 35 T. L. R. 437.

wages cannot conveniently be paid down (*l*).

Liability for acts of sub-committee.

Where a defendant merely joined as a member of the committee in the appointment of a sub-committee under the rules and goods were supplied to the club to its order, plaintiff who supplied the goods was non-suited as there was not sufficient evidence to go to the jury to fix liability on defendant (*m*). Where goods were bought by vice-president and secretary personally for club, see (*n*).

Acts of vice-president and secretary.

Summary of grounds upon which liability depends.

From the various cases quoted, therefore, it will be noted that the members of a club may be liable on contracts entered into by the trustees, committee of management, or other agents, either

(*l*) *Todd* v. *Emley* (1841), 7 M. & W. 427; and see *Wood* v. *Finch* (1861), 2 F. & F. 447, N. P.

(*m*) *Draper* v. *Earl Manvers* (1892), 9 T. L. R. 73.

(*n*) *Barnett & Scott* v. *Wood* (1888), 4 T. L. R. 278.

because the contracts are within the scope of the authority given by the rules, or because though they are beyond the scope of such authority, the members sought to be made liable can be shown to have sanctioned or subsequently ratified the particular transactions, or to have held out the persons entering into them as being authorised to do so (*o*).

Contracts within agent's authority.

Where an agent has authority to bind the members generally, and in fact contracts on their behalf, they are

Principals bound

liable even though the agent contracted in his own name, and without disclosing his agency. Where, how-

unless

ever, the other contracting party, whether in ignorance of the principals' existence or not, obtains a judgment

(*o*) *Delauney* v. *Strickland*; *Flemyng* v. *Hector*; and *Steele* v. *Gourley*, *supra*.

against the agent (*p*), or though he knows (*q*) at the time when the contract is made (*r*) or discovers afterwards (*s*) who the real principal is, elects to look to the agent to the exclusion of the principal, the principal is discharged from liability; that is to say, the members cannot be forced to pay, nor can their liability be revived (*t*).

creditor elects to give exclusive credit to agent.

This question of whether the tradesman or such other contractor, elects to give credit to the agent exclusively is one of fact, and depends on the

Election question of fact.

(*p*) Even though unsatisfied (*Kendall* v. *Hamilton* (1879), 4 App. Cas. 504).

(*q*) Actual knowledge must be proved (*Dunn* v. *Newton* (1884), 1 C. & E. 278).

(*r*) *Patterson* v. *Gandasequi* (1812), 15 East, 62.

(*s*) *Priestley* v. *Fernie* (1865), 3 H. & C. 977.

(*t*) *Patterson* v. *Gandasequi, supra.*

circumstances of each case (*a*). It has, however, been held that such election is proved conclusively by obtaining judgment against the agent (*b*), and even for part of the claim (*c*).

Exceptions

There are some exceptions to the rule above stated which are worthy of note. (1) Contracts under seal executed by agent in his own name,

Deeds.

cannot be enforced by (*d*) or against (*e*) the principal even though it is expressly stated that the agent is contracting on behalf of the principal (*f*).

(*a*) *Calder* v. *Dobell* (1871), L. R. 6 C. P. 486; *Curtis* v. *Williamson* (1874), L. R. 10 Q. B. 57; *Stoneham* v. *Wynam* (1901), 6 Com. Cas. 174.

(*b*) *Morel* v. *Earl of Westmoreland*, [1904] A. C. 11.

(*c*) *French* v. *Howie*, [1906] 2 K. B. 486.

(*d*) *Schack* v. *Antony* (1813), 1 M. & S. 573.

(*e*) *Re International Contract Co., Pickering's Claim* (1871), 6 Ch. App. 525.

(*f*) *Berkely* v. *Hardy* (1826), 8 D. & R. (K. B.) 102. *Sed quære:* Conveyancing Act, 1881, s. 46.

(2) Bills of Exchange and similar documents within the provisions of the Bills of Exchange Act, 1882, are also exceptions to the general rule imposing liability on a principal where agent is acting within his authority. For particulars under this head the reader is referred to the provisions of this statute. Bills of Exchange.

Where an agent contracts outside the scope of the authority which he derives from the rules of the club, and the fact of his agency is not made known at the time of the contract being entered into, club members cannot be bound by a subsequent ratification, even if the agent intended to act on behalf of the members generally (*g*). Further if the other Contracts beyond agent's authority. Members not bound. Nor if credit given to club as a legal entity.

(*g*) *Keighley, Maxted & Co.* v. *Durant*, [1901] A. C. 240; and *Re Enock and Zaretsky, Bock & Co.*, [1910] 1 K. B. 327, C. A.

contracting party elected to give credit in error to the club as a legal entity, and not to the members individually—they cannot be bound by ratification (*h*).

Right of members to sue on contract. Where bound they can sue. Limitations in right to sue.

Generally speaking where members are bound by a contract they can also sue upon it. Where, however, a contract is made by an agent outside his authority from the club, it cannot be enforced by the club, unless made ostensibly in its behalf and capable therefore of ratification by the club (*i*), or unless it is a contract relating to the goods of the club (*k*). Nor can it be enforced against the members unless

(*h*) *Jones* v. *Hope* (1880), 3 T. L. R. 247, n.; and *Overton* v. *Hewett, ibid.*

(*i*) *Keighley, Maxted & Co.* v. *Durant, supra*; *Kellner* v. *Baxter* (1866), L. R. 2 C. P. 174.

(*k*) *Rama Zotti* v. *Bowring* (1859), 7 C. B. (N. S.) 851.

they are estopped from denying the existence of the agent's authority (*l*).

Personal liability of club agents.

Trustees, members of the managing committee or other agents purporting to contract on behalf of a club, may incur a personal liability, either by reason of the form of the contract, or because in so contracting they are acting in excess of their authority (*m*).

Where authorised.

By contracting in their own names they are *primâ facie* liable and may be sued personally, even though they may have had authority to bind the members generally. If so authorised to contract, the other contracting party has the option of either suing them or the members on whose behalf

(*l*) *Ex parte Harrison* (1893), 69 L. T. 204; *Jetley* v. *Hill* (1884), 1 Cab. & El. 239.

(*m*) *Mountcashell* v. *Barber*, *supra* (1853), 14 C. B. 53; *Williams* v. *Hathaway* (1877), 6 Ch. D. 544.

they acted (*n*), and with the aforesaid exceptions (pp. 64, 65) in the case of deeds and negotiable instruments, this rule holds good whether the principals (*i.e.*, the club members) were or were not disclosed at the time of entering into the contract (*o*).

Where authorised warranty of authority.

Where an agent purports to act as having authority from the members so to do and in fact he has no such authority he is deemed in law to warrant the existence in fact of the necessary authority, failing which he may be sued for damages for breach of warranty of authority (*p*).

(*n*) *Queensbury* v. *Cullen*, 1 Bro. Parl. Cas. 396; *Todd* v. *Emley* (1841), 7 M. & W. 423, 430; *Lee* v. *Bissett*, *supra*, *cf. Whillies* v. *Roberts* (1873), 28 L. T. 668.

(*o*) Earl of Halsbury, Laws of England, "Agency," Vol. I.

(*p*) *Collen* v. *Wright* (1857), 8 E. & B. 647, followed in *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, C. A.

Breach of warranty of authority.

And in this connection it has been held to be immaterial that he *bonâ fide* believed that he was vested with such authority (*q*). The Courts, however, have also decided that, where the other party is fully acquainted with the facts from which such an authority might be inferred, there is no implied warranty of the existence of such authority in point of law (*r*). To enable the other party to recover damages it is also essential that he should have been misled by the false assumption of authority on the part of the professing agent (*s*).

Liability of managing committee.

Where a steward or secretary orders goods on credit by the committee's authority, such of the members as gave the authority or acquiesced in the

(*q*) *Overton* v. *Hewett, ante* (1886), 3 T. L. R. 246.

(*r*) *Eaglesfield* v. *Londonderry* (1878), 38 L. T. 303; and *Jones* v. *Hope, ante*, p. 66.

(*s*) *Halbot* v. *Leno*, [1901] 1 Ch. 344.

ordering on credit are personally liable (*t*).

And to fix them with liability it is only necessary to show that they knew of, and acquiesced in other transactions of the same kind, and so held themselves out, or allowed themselves to be held out, as having authorised dealings on credit (*a*).

These cases, however, must be distinguished from those in which the agent is only authorised to buy for ready money, in which, as we have seen (*b*), only those who individually authorise or acquiesce in such dealings are liable.

(*t*) *Stansfield* v. *Ridout* (1889), 5 T. L. R. 656.

(*a*) *Harper* v. *Granville-Smith* (1891), 7 T. L. R. 284; *Steele* v. *Gourlay, ante.*

(*b*) *Steele* v. *Gourley; Draper* v. *Manvers; Todd* v. *Emley; Queensbury* v. *Cullen; Wood* v. *Finch.* See pp. 55, 58, and 61 and 62, *ante.*

Liability of resigning members.

Provided that the contracts in question were made prior to a member's resignation he still remains liable upon them—but as to those made afterwards he is under no liability unless he has continued to hold himself out as a member. So, where the managing committee, under the rules, borrowed money and gave bonds for securing repayment, it was held that a member who had resigned was liable upon bonds so given during his membership (*c*).

Proprietary clubs and clubs incorporated under the Companies Acts

The ordinary rules applicable to traders and trading companies regulate the rights and liabilities in contract in the case of both these classes of clubs. It is not, therefore, within the scope of this work to advert to the law applicable in such cases and the reader is referred to writers on

(*c*) *Parr* v. *Bradbury* (1885), 1 T. L. R. 285, 525.

Commercial and Company Law generally. It is sufficient to say that the steward, committee, or other agent is *primâ facie* deemed to act on behalf of the company in the case of an incorporated club, and for the proprietor in the case of a proprietary club.

The proprietors may be sued in the club name on any contract made in connection with a proprietary club (*d*). And, as we have observed (*e*), goods upon club premises belonging to members are liable to be seized on a distress for rent.

SECT. 2. IN TORT.

Proprietary and incorporated clubs.

The ordinary principles of the liability of a master for the acts of his servants or agents would seem to apply.

(*d*) *Firmin* v. *International Club* (1889), 5 T. L. R. 694.

(*e*) *Challoner* v. *Robinson.* See p. 7, *ante*.

That is to say, if the act done is done within the express or implied authority of the agent at the time, liability attaches to the employer or master. So, where a dishonest servant who was engaged as a night porter by a club, the club was held liable for the value of some jewelry which was stolen by him, and this although a most comprehensive rule was published that no liability would be entertained by proprietors for articles left or deposited in the club (*f*).

Principles of agency apply.

A fortiori the proprietor of a club is liable for any nuisance caused in carrying on the club (*e.g.*, noisy crowds), and an injunction may be obtained against him to restrain such nuisance (*g*).

(*f*) *Williams* v. *Curzon Syndicate, Ltd.* (1919) 35 T. L. R. 475, C. A.

(*g*) *Bellamy* v. *Wells* (1890), 60 L. J. Ch. 156; 63 L. T. 635.

Club employee not liable where no negligence proved.

Where, however, no negligence, on the part of a treasurer of a club whose funds had been stolen, was proved, he was held not liable at the suit of the club trustees for its loss (*h*).

Damages for negligence of member.

In a recent case the doctrine of a club's liability for the acts of its agents was carried to an extent which would hardly be visualised by the judges in some of the earlier cases relating to the liabilities of principals; where a golf-club was held jointly liable with one of its members who "sliced" a ball from the tee on to a public road and struck the plaintiff so violently that he lost his eye. It was proved in this case that balls often dropped on the road, and the knowledge of this fact by the directors was apparently an

(*h*) *Trake* v. *Felton* (1897), 13 T. L. R. 252.

important item in mulcting the club in damages (*i*).

The only reported case dealing with the liability of members personally of an unincorporated club, is where the members of the committee of a football club, who had employed an incompetent person to repair a stand for the accommodation of visitors to the ground, were held personally liable for injuries to one of the public caused by the collapse of the stand (*k*).

Unincorporated members' clubs.

(*i*) *Castle* v. *St. Augustine's Links, Ltd., and another* (1922), 38 T. L. R. 615.

(*k*) *Brown* v. *Lewis* (1896), 12 T. L. R. 455, D. C.

NOTE.—As to liability of club employers under the Workmen's Compensation Act, 1906, for injuries to workmen in their employ, see *Walker* v. *Crystal Palace Football Club*, where an injured professional player was held to be a workman within the meaning of the Act ([1910] 1 K. B. 87).

SECT. 3. CRIMINAL.

Criminal liability of members.

If a member of a club, whether a members' or proprietary club, and whether incorporated or not, steals or embezzles any of the property or moneys of the club, he may be convicted of larceny or embezzlement (*l*).

Where club has no legal existence.

And it has been held that a person can be convicted of embezzlement of the property of an illegally constituted club of which he is a member, for though the club has no legal existence as an association, the members thereof may have a legal existence, as beneficial owners of property (*m*).

(*l*) Larceny Act, 1868, s. 1. Repealed and substantially re-enacted in Larceny Act, 1916, s. 40 (4). See as to form of indictment for unincorported members' club, *R.* v. *Robson* (1885), 16 Q. B. D. 137 ; and as to case of working men's club, Friendly Societies Act, 1896, s. 51.

(*m*) *R.* v. *Tankard*, [1894] 1 Q. B. 548.

SECT. 4. ACTIONS BY AND AGAINST CLUBS.

Unincorporated members' clubs.

Such a society not being a partnership or legal entity can neither sue nor be sued in the club name (*n*). Nor can any officer of the club sue or be sued on behalf of the club. Even though the rules purport to invest him with power to that effect (*o*). So according to the rules of court service of a writ upon a club secretary in an action against the club, is bad (*p*). Trustees, however, can sue or be sued in respect of property vested in them, and in such action they represent the members

Neither sue nor be sued in club name.

Nor in name of official of club.

Service of writ on secretary bad.

(*n*) *Grossman* v. *Granville Club* (1884), 28 Sol. Jo. 513. See also as to duty on club property customs, and Inland Revenue Act, 1885, and *Re New University Club* (1887), 18 Q. B. D. 720.

(*o*) *Gray* v. *Pearson* (1870), L. R. 5 C. P. 568; *Evans* v. *Hooper* (1875), 1 Q. B. D. 45.

(*p*) R. S. C., Ord. 9, r. 8.

Members may be authorised by court to represent all.

beneficially interested (*q*). And under the Rules of Court, in any action by or against a members' club, one or more of the members may sue or be sued, and may be authorised by the Court to defend, on behalf of or for the benefit of all the members (*r*).

A recent case bearing out the position indicated above as to members' club is as follows:—A member of an unregistered society, on behalf of the society, executed and purported to take an underlease made to the society itself as underlessee. The head lease being forfeited for breach of covenant, the society brought an action for an order vesting the residue of the term

(*q*) R. S. C., Ord. 16, r. 8.

(*r*) *Ibid.*, r. 9; *Richardson* v. *Hastings* (1844), 7 Beav. 301; *Harrison* v. *Abergavenny* (1887), 57 L. T. 360; *Andrews* v. *Salmon* (1888), W. N. 102; *Wood* v. *McCarthy*, [1893] 1 Q. B. 775.

of the underlease in them under s. 4 of the Conveyancing and Law of Property Act, 1893. The writ was afterwards amended by adding three persons who were trustees of the society, on behalf of all the members: *Held*, plaintiffs were not underlessees within the meaning of the Act, and were not entitled to sue as trustees, or at all (*s*).

Personal relief claimed also against an official.

And as to a case in which personal relief is claimed against an official in an action against the committee and the official see (*t*). In the first the proprietor may sue or be sued in his own name or in the name of the club (*a*),

Proprietary and incorporated clubs.

(*s*) *Jarrott* v. *Ackerley* (1915), 85 L. J. Ch. 135; 113 L. T. 371.

(*t*) *Harvey* v. *Beckwith* (1864), 2 Hem. & M. 429, 10 L. T. 632.

(*a*) *Firmin* v. *International Club* (1889), 5 T. L. R. 694.

and in the second the club may sue or be sued in its corporate name.

Working men's clubs.

Where registered, any officers authorised by rules may sue or be sued in their own names with the description of their office appended (*b*), and the death, resignation, or removal from office does not affect the proceedings after they have commenced (*c*). Service of legal process is affected by personal service on officers sued, or by leaving a true copy at registered office, or if it is closed affixing it to the outer door, and posting a registered letter addressed to the committee at their registered office (*d*).

Registered.

Unregistered.

Where unregistered, the same rules apply as in the case of an unincorporated members' club (*e*).

(*b*) Friendly Societies Act, 1896, s. 94 (1).
(*c*) *Ibid.*, s. 94 (3).
(*d*) *Ibid.*, s. 94 (4) and (5).
(*e*) Pages 77, 78, *ante*.

CHAPTER V.

CLUB DEBENTURES.

Authority to issue. Unincorporated members' club under rules.

If an unincorporated members' club wants to borrow money on the security of debentures charging the club property and assets, it can only do so under express authority of its rules.

Incorporated club. Under memo. and articles of association.

In the case of a club incorporated under the Companies Act, such a power can only be conferred by the memorandum and articles of association.

Liability on debentures. Incorporated club.

Such debentures usually contain an undertaking to repay the money, and where an incorporated club is borrowing on such security, the undertaking is expressly given in the name of the company, and neither the shareholders

nor club members incur any personal liability except such as they are bound to meet as contributories in the event of a winding-up.

Unincorporated members' club.

In these cases the incidence of liability is for obvious reasons not so easy to determine, as it is not convenient that all members of such a club, who might be extremely numerous, should incur a joint liability, and further it might work considerable hardship upon the trustees or committee to be asked to undertake it where a large sum of money is involved. Again, as we have observed (*a*), questions as to liability where members are continually changing through resignation or otherwise, may have to be decided. So it is usual for the trustees or com-

(*a*) *Parr* v. *Bradbury* (1885), 1 T. L. R. 525, *ante*, p. 71.

mittee to undertake to pay only out of the club funds, but not otherwise, so making the club property, assets, and funds the only security for repayment.

Usual undertaking is to charge club funds and assets only.

In a recent case a member of a club advanced to the club £10,000, for which the committee issued debentures which merely acknowledged the receipt of the sums which were to be paid off, as the committee might determine, after three months' notice. The executors of the member claimed a declaration that they were entitled to a first charge on the assets of the club as security for repayment: *Held*, (1) there was nothing in the contract that could operate as a charge upon the property of the club; (2) the Committee was not personally liable. There was but an acknowledgment of the receipt of the money and an implied agreement to

No charge created where mere acknowledgment of receipt by committee.

repay at a time to be determined by the committee, nor were the debenture-holders entitled, by subrogation or otherwise, to be placed in the position of mortgagees who had been paid off by the moneys raised upon the debentures (*b*).

This is a very strong decision, and the writer would respectfully advise any club member who is so attached to the welfare of his club as to lend money to it upon such security, to carefully consider its effect before he parts with his cash.

Registration of debentures.

I. Incorporated clubs.

Bills of Sale Acts do not apply.

The debentures of a club incorporated under the Companies Acts are exempt from the provisions of the Bills of Sale Acts (*c*), but same must be registered

(*b*) *Wylie* v. *Carlyon*, [1922] 1 Ch. 51.

(*c*) Bills of Sale (1878) Amendment Act, 1882, s. 17; *Re Standard Manufacturing Co.*, [1891] 1 Ch. 62.

under the provisions of the Companies Act, 1900 (*d*).

II. Unincorporated clubs.

As to unincorporated club debentures, however, they are within the operation of the Bills of Sale Acts, and this is so even though they are registered under the Friendly Societies Act, 1896 (*e*). Now the Bills of Sale (1878) Amendment Act, 1882, provides a special form of bill for personal chattels, which if not complied with renders the bill void. Hence debentures given by unincorporated clubs should not include furniture or such other personal chattels inasmuch as, not being in the prescribed form, they will be ineffectual, at least as regards such chattels (*f*).

Operation of Bills of Sale Acts.

(*d*) Companies Act, 1900, s. 14.

(*e*) *Great Northern Rail. Co.* v. *Coal Co-operative Society*, [1896] 1 Ch. 187.

(*f*) Bills of Sale, etc., Act, 1882, s. 9.

Deed not essential.

Debentures need not be under seal, and it is sufficient if they are signed by the persons authorised by the company, or by the members of the club, as the case may be (*g*).

(*g*) *British India Steam Navigation Co.* v. *Commrs. of Inland Revenue* (1881), 7 Q. B. D. 165.

CHAPTER VI.

DUTY PAYABLE BY CLUBS.

Duty on annual value.

ALL real and personal property vested in or belonging to any members' club or club incorporated under the Companies Acts, is chargeable with duty at the rate of 5 per cent. per annum on the annual value, income, or profit (*a*) of such property accrued to the club in the yearly period ending on April 5th, in each year, after deducting all necessary outgoings and all expenses incurred in the management of the property (*b*).

Customs and I.R. Act, 1885.

(*a*) As to how to arrive at this, see *Re Surrey County Cricket Club*, [1901] 2 K. B. 400.

(*b*) Customs and I. R. Act, 1885, ss. 11 and 12.

Exemptions.

Registered working men's clubs.

Provided working men's clubs are duly registered under the Friendly Societies Act, 1896, they are exempt from the duty—but not otherwise (*c*).

There is also an exemption where property has been acquired through funds voluntarily contributed within a period of thirty years immediately preceding (*d*), but entrance fees and subscriptions of members, and moneys raised by the issue of debentures, are not funds voluntarily contributed within the meaning of this exemption (*e*).

Duty is first charge.

This duty is a first charge on all property in respect whereof it is payable while such property remains in possession or under the control of the club

(*c*) Customs and I. R. Act, 1885, s. 11 (4).

(*d*) *Ibid.*, s. 11 (6).

(*e*) *Re New University Club* (*Duty in Estate*) (1887), 18 Q. B. D. 720.

chargeable with the duty, or of any persons acquiring it with notice of any duty being in arrear; and the club is answerable for the payment of the duty, and so also is every "accountable officer," *i.e.*, every treasurer, secretary, or other officer, trustee, or member of the club, receiving or having possession or control of the annual income or profits (*f*).

Annual account of all property to be delivered to I. R. Commissioners.

Every club chargeable with the duty is required, on or before October 1 in each year, to deliver to the I. R. Commissioners or their officers, a full and true account of all property in respect of which the duty is payable, and of the gross annual value, income, or profits accrued to the club in the year ending on the preceding April 5, and all deductions claimed in respect thereof.

(*f*) Customs and I. R. Act, 1885, ss. 12 and 14.

Every "accountable officer" is also answerable for the due delivery of the account (*g*). As to further provisions *re* penalties for failure to comply with provisions of statute, appeals, assessment, rights of accountable officer, see (*h*).

Duty on liquor supplied to clubs.

A duty of 6*d*. per £ is levied on the amount of the purchases of intoxicating liquor supplied in or to a club, or on behalf of a club to its members (*i*).

Finance (1909—1910) Act.

This duty is charged upon a statement which the secretary of the club is required to make in the January of each year, of the purchases during the preceding calendar year (*k*).

The secretary must furnish the statement upon service on him of a notice in writing requiring him so to do, and

(*g*) Customs and I. R. Act, 1885, ss. 13 and 15.
(*h*) *Ibid.*, ss. 13, 15, 16, 17, 18, 19, and 20.
(*i*) Finance (1909—1910) Act, 1910, s. 48 (1).
(*k*) *Ibid.*, s. 48 (1).

in default of so doing he is liable to a fine not exceeding £20, recoverable summarily—and in the case of a second offence to imprisonment with or without hard labour for not more than one month or to a fine of £50, or to both, and if he knowingly delivers an untrue statement he is liable to a fine of £50, on summary conviction or to not more than three months' imprisonment with or without hard labour (*l*). The notice requiring the statement may be sent by post addressed to the club (*m*).

As to procedure where there has been a change of secretary see (*n*).

If no statement has been delivered in

(*l*) Finance (1909—1910) Act, 1910, s. 48 (2), Stat. R. & O. 1910, p. 404.

(*m*) *Ibid.*

NOTE.—The duty is payable on the actual price of the liquor paid by the club. See *Callaway* v. *R.* (1913), 108 L. T. 1029; 29 T. L. R. 603.

(*n*) *Booth* v. *Weightman* (1904), 91 L. T. 532.

any year by February 1 the supply of intoxicating liquor is to be treated, as long as the failure to furnish the statement continues, as a sale of intoxicating liquor without licence (*o*).

Duty must be paid by March 1.

And, if by March 1st in any year the duty remains unpaid, the collector of customs and excise may, after notice in writing has been served on the secretary requiring payment, issue his warrant authorising distraint to be made on the club premises for the duty due and unpaid (*p*). The proceeds of the distress must be sold by public auction after six days' notice has been given of the sale, and any surplus

Otherwise distraint.

(*o*) Finance (1909—1910) Act, s. 48 (4).

(*p*) *Ibid.*, s. 48 (3).

NOTE.—As to position of club servants under the Unemployment Insurance Act, 1920, see *Re Junior Carlton Club*, 38 T. L. R. 11; ditto as to golf club greenkeepers, see *Ex parte Vellacott*, 38 T. L. R. 113.

after payment if duty owing, expenses, and costs, must be handed over to the secretary for the benefit of the club.

Entertainment tax.

By the Finance (New Duties) Act, 1916, a tax is imposed upon the audience or spectators at any entertainment, lecture, show, or the like, admission to which is gained by payment direct or indirect. So, where members of a cricket club were admitted to matches played on the club ground as long as they paid their ordinary club subscriptions, and the general public were only admitted on payment of an admission fee, it was held that there was evidence that part of the subscriptions was paid for admission by the members to an "Entertainment," and that the club was therefore liable to entertainment tax within the Act.

(*q*) *A.-G.* v. *Swan*, [1922] W. N. 56.

CHAPTER VII.

SALE OF INTOXICATING LIQUORS IN CLUBS.

SECT. 1. APPLICATION OF LICENSING ACTS PRIOR TO THE PASSING OF THE LICENSING ACT, 1921.

With the object of assisting club officials in Ireland, where the Licensing Act of 1921 does not apply, and also in case the Legislature sees fit in the future to repeal, in the whole or in part, the somewhat stringent provisions as to clubs in this Act, the writer considers it advisable and instructive, to state shortly what the law was prior to the 31st August, 1921, when the Act of 1921 came into operation.

Members' clubs.

The main proposition to recollect in this connection is that the Licensing Acts did not apply to *bonâ fide* members' club in which intoxicating liquors were supplied to members only, whether for consumption on or off the club premises, and this is for the reason which has been indicated (*ante*, p. 6, n. (*g*)), that such a transaction did not constitute a sale by retail within the meaning of the Acts, but was in the nature of a release by other members, of their shares in the property supplied (*a*). The same reasoning resulted in the quashing of a conviction under s. 65 of the Licensing (Consolidation) Act, 1910, of certain club members, who, to celebrate a festive occasion removed quantities of liquor to a school some distance from

No application to *bonâ fide* clubs where members only supplied there being in law no sale.

(*a*) *Graff* v. *Evans* (1882), 8 Q. B. D. 373; *Ranken* v. *Hunt* (1894), 10 R. 249.

the club, and there dispensed it to their fellow-members at the usual club tariff (*b*).

Sale to agent for consumption off.

So it has also been held that the supply of intoxicating liquor to the duly authorised agent of a member, for consumption off the premises, was not a sale on unlicensed premises within the meaning of the Licensing Act, 1872, s. 3 (*c*). On the other hand, where the wife of a member of a working man's club bought beer from the club steward for her husband who was not at the

(*b*) *Humphrey* v. *Tudgay*, [1915] 1 K. B. 119

NOTE.—*Quære :* Whether if appellants had been proceeded against under s. 94 of the Act, they could have been convicted.

NOTE.—It is not to be understood from above observations that the Licensing "Acts" now apply to clubs to any greater extent than is provided in the Act of 1921 ; see s. 2, of this chapter.

(*c*) *Davies* v. *Burnett*, [1902] 1 K. B. 666 (but see note (*e*), *post*).

time on or about the club premises, the magistrates were justified in holding that the transaction was not a transfer permitted within the rules of the club, and that the wife was not a *bonâ fide* agent for the member (*d*). But later, by statute (*e*), the supply of intoxicating liquor in a club for consumption off the premises was prohibited, except to a member on the premises, under the penalty of a fine, on summary conviction, of not exceeding £10; and both the person supplying and the person obtaining the liquor are liable to the penalty.

Agent not *bonâ fide*.

Statutory prohibition of consumption "off."

The basis that liquor was part of the general property of the club was again exemplified in a case where in a members' association possessing quantities

(*d*) *Woodley* v. *Simmonds* (1896), 12 T. L. R. 196.
(*e*) Licensing (Consolidation) Act, 1910, s. 94.

of liquor and same being distributed amongst the others on payment of the price to one of their number, it was held that this was not a sale by retail within the meaning of the Licensing (Consolidation) Act, 1910, s. 65, even though the association having been registered as a club under s. 91 of the Act, is liable to be struck off the Register under s. 95, on the ground that it was not conducted in good faith as a club (*f*).

Licensing (Consolidation) Act, 1910, ss. 65, 91, 95.

If intoxicating liquor is supplied to, and paid for by a person who is not a *bonâ fide* member of the club or his duly authorised agent, that is a sale without a licence within the meaning of the Licensing Acts. So, where the alleged non-member, to whom the liquor was supplied, had paid no

Sale of liquor to non-members.

(*f*) *Metford* v. *Edwards*, [1915] 1 K. B. 172.

subscription and the application for membership which he had signed had been torn up, the conviction of the manager who supplied the liquor was upheld (*g*).

Again, where a stranger entered a working men's subscription club, one rule of which forbade visitors paying money direct to the manager, and W. a member, entered the stranger's name as a visitor; then the stranger put down 8*d*. asking for two pints of ale, and W. received it and the ale was supplied to the stranger, it was held that W. had sold ale to the stranger without a licence (*h*).

But where liquor was sold to a non-member by the steward on the club

Committee not liable when sale contrary to their order.

(*g*) *R.* v. *Glamorganshire JJ.* (1889), 5 T. L. R. 636.

(*h*) *Stevens* v. *Wood* (1890), 54 J. P. 742, D. C.

premises contrary to the orders of the committee and without their knowledge or consent, it was held that the committee were wrongly convicted, as they were not, in the circumstances, responsible for the acts of their steward (*i*).

Temporary exchange of members.

As this sometimes happens during spring cleaning or the like, it is questionable if liquor may be supplied to such temporary members with impunity. Lord Halsbury is of opinion that it can without constituting a breach of the Acts (*k*).

Proprietary clubs.

In proprietary clubs, inasmuch as the members have no interest in the property, which belongs to the proprietor, the supply of liquor at a price

(*i*) *Newman* v. *Jones* (1886), 17 Q. B. D. 132; followed in *Inland Revenue* v. *Cardiff Conservative Club Co.* (1894), 58 J. P. 120.

(*k*) Halsbury's Laws of England, "Clubs," p. 430.

constitutes a sale, and the premises must be duly licensed.

Must be licensed.

So where in a proprietary club, a stranger was elected an honorary member *instanter* for the purpose of having a drink: proprietor was convicted for selling without a licence (*l*).

Pretended club must be licensed.

Again, where the premises were fitted up like a public house, but had a sign board over the door, on which the words "The Working Men's Club," were painted; the defendant professed to be the manager, but he was unable to show how the accounts were kept or to give the names of the members, and it did not appear that either the committee or the secretary had any means of checking him; it was held that

(*l*) *Bowyer* v. *Percy Supper Club, Ltd.*, [1893] 2 Q. B. 154; and see *National Sporting Club, Ltd.* v. *Cope* (1900), 16 T. L. R. 158, *post*, p. 104.

he was rightly convicted of selling without a licence (*m*).

Incorporated clubs.

It has been held that the manager of a club in the form of a limited company, the shareholders in which constitute the members of the club, is not liable criminally under the Licensing Act, 1872, for the sale at the club of intoxicating liquors to members (*n*). Lord Halsbury is of opinion that this decision is of doubtful value in principle, the main source of the company's income being the receipts for food and liquor sold, and as the incorporated company is a legal entity, having a separate existence in law from the shareholders, it is somewhat difficult to follow why there

(*m*) *Evans* v. *Hemingway* (1887), 52 J. P. 134, D. C. See also *Lynam* v. *O'Reilly* (1898), 2 I. R. 48.

(*n*) *Newell* v. *Hemingway*, 5 T. L. R. 93, 53 J. P. 324.

was not a sale by the company to the members (*o*). The writer respectfully agrees with Lord Halsbury's reasoning, and in the following case it seems to have had some consideration. In a club, the members of which formed themselves into a joint stock company under the Companies Acts for the purpose of carrying on the club, there was no rule in the memo. or articles of association or constitution of the club which prevented other than members of the club from holding shares in the company, and in time, owing to the deaths of some members and the resignation of others who were shareholders, a few shares became the property of persons who were not members. The company, in carrying

(*o*) Halsbury's Laws of England, "Clubs," p. 431, note (*r*).

on the club, sold by retail intoxicating liquors and tobacco to members of the club: *Held*, the company was a separate legal entity from members of the club, and the sale of the intoxicating liquors and tobacco was not, in law or fact, a distribution of the common property of the members among themselves, but the sale by retail of these articles by the company to the members, and constituted breaches of the Beerhouse Act, 1834, s. 17, and Refreshment Houses Act, 1860, s. 19 (*p*).

Summary as to incorporated clubs.

So, apparently, where every member was a shareholder and every shareholder a member, the Licensing Acts did not apply where members only were supplied with liquor; but if some of the members were not shareholders,

(*p*) *National Sporting Club, Ltd.* v. *Cope* (1900), 16 T. L. R. 158; 64 J. P. 310.

or some of the shareholders not members, then apparently a licence was required for the sale of intoxicants, and the proportion of members to shareholders would appear to have been immaterial.

SECT. 2. SCOPE AND EXTENT OF THE LICENSING ACT, 1921.

This statute has been instrumental in altering the law as to the sale of intoxicating liquors in clubs to a very great extent, and although the principles laid down in the various cases referred to in the previous section of this chapter may remain useful for reference under circumstances other than those in which the supply of intoxicants in clubs is concerned, members must now pay as much

attention to the "permitted hours" for liquid refreshment as if partaking of same in any ordinary licensed premises.

For reasons best known to those responsible for the Act, some differences exist in the law applicable to

(1) The Metropolis, and

(2) Places outside the Metropolis.

For the detailed provisions of this statute in so far as it is applicable to clubs (ss. 1—14) the reader is referred to Appendix A, in which the sections are set out "verbatim," and also the rules which were drawn up for the purposes of giving effect to the Act.

Before enlarging upon the general provisions of the Act, there are certain definitions which must first be clearly understood.

Definitions.

The expression "club" means registered club.

The expression "Metropolis" means the administrative county of London, with the addition of any area which, though not within the administrative county of London, is within the four-mile radius of Charing Cross.

The expression "permitted hours" means as regards any licensed premises or club the hours on any day during which intoxicating liquor may be sold or supplied therein; and

The expression "conclusion of the permitted hours" means the end of the period in the afternoon or evening (as the case may be) during which the sale or supply of intoxicating liquor, for any purpose, is permitted (*q*).

Permitted hours.

The number of hours during which

(*q*) Licensing Act, 1921, s. 20.

intoxicating liquors may be supplied for consumption either on or off the club premises (*r*) or, subject as hereinafter set out, consumed on the premises (*s*) are as follows :—

(1) In the Metropolis, nine hours on week days (*t*), and five hours on Sundays, Christmas Day, and Good Friday (*a*),

(2) Outside the Metropolis, eight hours on week days (*t*), and five hours on Sundays, Christmas Day, and Good Friday (*a*).

In the Metropolis.—The members of a club may fix the "permitted hours," during which intoxicating liquor may be supplied to them or their guests.

(*r*) Licensing Act, 1921, s. 1.
(*s*) *Ibid.*, s. 4.
(*t*) *Ibid.*, s. 1.
(*a*) *Ibid.*, s. 2.

On week days the total number of hours must not exceed nine, and on Sunday, Christmas Day, and Good Friday, five hours. The earliest hour they may fix is 11 a.m. and the latest hour 11 p.m. on week days, and there must be a break of at least two hours after noon. The members of a club may also fix the permitted hours on Sundays, Christmas Day, and Good Friday, provided that not more than two hours may be between 12 (noon) and 3 p.m., and not more than three between 6 p.m., and 10 p.m. (*b*).

Outside the Metropolis.—The members may fix the "permitted hours," during which intoxicating liquors may be supplied to them or their guests as follows:

Total number of hours on week days

(*b*) Licensing Act, 1921, s. 2.

shall not exceed eight, and on Sundays, Christmas Day, and Good Friday, five hours. The earliest hour they may fix is 11 a.m. (*c*) and the latest hour 10 p.m. on week days (*d*), with a break of at least two hours after noon (*e*).

Subject to the following limitations club members may also fix the "permitted hours," on Sundays, Christmas Day, and Good Friday. Not more

(*c*) The licensing justices may, by order, direct that the earliest hour shall be 9 a.m. instead of 11 a.m., whereupon the members can, if they wish, take advantage of the order, and may, subject to their club rules, supply and consume intoxicating liquor as early as the hour fixed by the justices (*ibid.*, s. 1 (ii)).

(*d*) Here, again, the licensing justices may extend this period to 10.30 p.m., under certain circumstances. If they do, members, subject to their club rules, may supply or consume intoxicating liquor up to that hour, or consume same half an hour after that hour, with a meal as provided by s. 5 (*post*, p. 111).

(*e*) Licensing Act, 1921, s. 2.

than two of these hours may be between 12 noon and 3 p.m., and not more than three between 6 p.m. and 10 p.m.

Although the definition of "permitted hours" refers only to the "supply" of intoxicating liquor, apparently the above-mentioned "permitted hours" apply to the "consumption" of such liquors also, and indeed a subsequent (*f*) section expressly provides that a member may "consume," but may not be "supplied" with, intoxicating liquor with a meal at any time within half an hour after the conclusion of the permitted hours, provided that the liquor was supplied at the same time as the meal for consumption with the meal.

One saving feature of this stringent

(*f*) Licensing Act, 1921, s. 5 (*d*).

piece of legislation, however, is that a member as long as he is residing at his club may at any time be supplied with and consume intoxicating liquors *ad lib.* (*g*).

Special provision as to extension of permitted hours in the evening in certain premises.

Another humane feature of this statute is that clubs are allowed to add one hour in the evening to the "permitted hours," if, and so long as the licensing justices are satisfied that they are structurally adapted, and *bonâ fide* used, or intended to be used, for habitually providing for the accommodation of persons frequenting the premises substantial refreshment, to which the sale of intoxicating liquor is ancillary (*h*).

To obtain the benefit of this pro-

(*g*) Licensing Act, 1921, s. 5 (*a*).
NOTE.—*Ad lib.* is not in the section.
(*h*) Licensing Act, 1921, s. 3 (2).

vision the secretary of the club must give not less than 14 days' notice in writing to the chief officer of police of the district wherein the premises are situate, and the date on which he intends to avail himself of the provisions of this section (*i*); and later, when the provisions come into operation, there must be a notice permanently affixed in some conspicuous place in the premises to the effect that the provisions of the section apply to the premises (*k*). These provisions will apply for the period of the current licensing year, and will continue to apply unless the secretary of the club gives not less than 14 days' notice in writing before the expiration of the licensing year to the chief officer of

(*i*) Licensing Act, 1921, s. 3 (3).
(*k*) *Ibid.*

police that he intends to cease to avail himself of the provisions of the section, in which case they will cease to apply at the end of that year.

By the Licensing Rules (see Appendix A, r. 26), 1921, the first-mentioned notice is to be signed by the applicant or his authorised agent, who must state the address of the club in respect of which the application is made, and the notice to the chief officer of police may specify the date, not being less than 14 days later, on which, if the certificate is granted, the applicant intends to begin to avail himself of the said provisions, in which case if the certificate is granted, the notice will be a sufficient compliance with the provisions of the section. Again, the rule provides that the justices are to satisfy themselves in such manner as

they think fit as to whether the arrangement of the premises and the nature of the business carried on are such as to justify the grant of the certificate.

It is important to observe here that where a club avails itself of the provisions of s. 3, intoxicating liquor supplied during that extra hour shall be supplied only for consumption at a meal supplied at the same time in such portion of the premises as is usually set apart for meals, and no person may consume intoxicating liquor on the premises during that hour except at such meal; and further, any drinking bar in the premises must be closed.

Intoxicants may, however, be consumed (but not supplied) half an hour after that hour (*l*). The provisions

(*l*) Licensing Act, 1921, s. 5 (*d*).

of this section only apply to week days (*m*).

Summary as to permitted hours.

And so, to summarise the foregoing, unless and until the members of a club so decide, the "permitted hours" are :

A. On Week Days.

(1) In the Metropolis :

Between 11.30 a.m. and 3 p.m. ; and between 5.30 p.m. and 11 p.m.

(2) Outside the Metropolis :

Between 11.30 a.m. and 3 p.m. ; and between 5.30 p.m. and 10 p.m.

B. On Sundays, Christmas Day, and Good Friday.

(1) In the Metropolis :

Between 12.30 p.m. and 2.30 p.m. ; and between 7 p.m. and 10 p.m.

(*m*) Licensing Act, 1921, s. 3 (1).

(2) Outside the Metropolis :

Between 12.30 p.m. and 2.30 p.m. ; and between 7 p.m. and 10 p.m. (*n*).

Exemptions.

Certain exemptions are granted under certain circumstances, for the accommodation of persons attending a public market, or following a lawful trade or calling, on such days, and during such time, except between 1 a.m. and 2 a.m., as may be specified in the order of exemption. A notice of such exemption order must be affixed and kept affixed in a conspicuous position outside the premises (*o*).

Exemptions may also be granted in respect of a special occasion or occasions

(*n*) Licensing Act, 1921, s. 2.

NOTE.—As to exemptions and saving provisions generally, see s. 5, Appendix A.

(*o*) Licensing Consolidation Act, 1910, s. 55, as amended by the Licensing Act, 1921, Sched. I., Part II.

during such hours, and on the occasion or occasions as are specified in the order (*n*).

Intoxicating liquor may be ordered or despatched for consumption off the premises, and may be sold to a registered club for the purposes of the club at any time (*q*).

Offences as to Supply or Consumption of Intoxicating Liquor in Clubs.

(1) No person shall, except during the "permitted hours,"

(a) either by himself, or by any servant or agent, sell or supply to any person in any club any intoxicating liquor to be consumed either on or off the premises; or,

(*p*) Licensing Consolidation Act, 1910, s. 57, as amended, *ibid.*

(*q*) Licensing Act, 1921, s. 5.

(b) consume in or take from (*r*) any club any intoxicating liquor.

(2) No person may distribute, etc., intoxicating liquor from any van, etc., except under certain prescribed conditions (*s*).

(3) Intoxicating liquor may not be supplied for consumption on the premises, or consumed thereon, unless it is paid for before or at the time when it is supplied. If, however, the liquor is supplied at the same time and consumed with a meal, it may be paid for together with the price of the meal (*t*).

(4) The "long pull" is prohibited (*a*).

The penalty for the contravention, etc., of the above provisions is a fine not exceeding £30 (*b*).

(*r*) Licensing Act, 1921, s. 4.
(*s*) *Ibid.*, s. 7, see Appendix A for details.
(*t*) Licensing Act, 1921, s. 7.
(*a*) *Ibid.*, s. 9. (*b*) *Ibid.*, s. 14.

SECT. 3. REGISTRATION.

The main provisions regarding the registration of clubs are now contained in the Licensing (Consolidation) Act, 1910 (*c*), to which the reader is referred for all information as to this branch of the Law of Clubs. The following are the most important provisions.

Registration.

The secretary (*d*) of every club which occupies a house (*e*) or part of a house which is habitually used for the

(*c*) To be read now in conjunction with the Licensing Act, 1921.

(*d*) Includes any officer of the club, or other person performing the duties of secretary and in the case of a proprietary club, where there is no secretary, the proprietor: Licensing Act, 1902, s. 32.

(*e*) There is no definition of club in the Act; the word is used in popular sense and probably includes Masonic Lodges or other social organisations occupying premises where intoxicants are supplied to the members.

purposes of a club, and in which any intoxicating liquor is supplied to members or their guests, or any other premises which are habitually so used, and in which intoxicating liquor is so supplied, shall cause the club to be registered in the manner provided by this Act (*f*). The registration does not constitute the club licensed premises, nor does it authorise any sale of intoxicating liquor therein which would otherwise be illegal (*g*). The clerk to the justices (*h*) of every Petty Sessional Division shall keep a register of all such clubs within the Division (*i*).

Mode of registration.

The register shall be in the form

Contents of register.

(*f*) Licensing (Consolidation) Act, 1910, s. 91 (1).

(*g*) *Ibid.*, s. 91 (2).

(*h*) As to London, see Licensing (Consolidation) Act, 1910, s. 98. The clerk's duties are ministerial only; *per* PICKFORD, J., *Lees* v. *Lovie*, [1912] 2 K. B. 425.

(*i*) Licensing (Consolidation) Act, 1910, s. 92 (1).

prescribed by the secretary of state, and shall contain: (1) the name and objects of the club; (2) the address of the club; (3) the name of the secretary; (4) the number of members; (5) the rules of the club relating to (i) the election of members and the admission of temporary and honorary members, and of guests; (ii) the terms of subscription and entrance fee, if any; (iii) the cessation of membership; (iv) the hours of opening and closing; (v) the mode of altering the rules (*k*); (vi) the permitted hours for consumption of intoxicants applicable to the club (*l*).

Return by secretary.

The secretary of every such club, shall, in the month of January in every year, furnish to the clerk to the justices

(*k*) Licensing (Consolidation) Act, 1910, s. 92 (2).
(*l*) Licensing Act, 1921, s. 13.

a return, signed by the secretary, giving the above-mentioned particulars, together with a signed statement that there is kept upon the club premises a register of the names and addresses of the club members and a record of the latest payment of their subscriptions (*m*).

Where a new club which requires to be registered under this Act is about to be opened, the secretary shall, before the opening of the club, furnish to the clerk to the justices, a return (*n*), signed by the secretary, giving the above-mentioned particulars.

The clerk to the justices shall keep the register of clubs corrected up to date in accordance with the returns furnished by the secretaries, and the

(*m*) Licensing (Consolidation) Act, 1910, s. 92 (3).
(*n*) *Ibid.*, s. 92 (4).

register shall, at all reasonable hours, be open to inspection of an inspector or superintendent of police, or an officer of the Inland Revenue, without payment, and of any other person on payment of a fee not exceeding one shilling (*o*). A fee of 5*s*. shall be payable to the clerk to the justices on each return made by the secretary of a club (*p*).

In the application of this section to Oxford, the Registrar of the Court of the Chancellor of the University shall, in the case of any club mainly composed of members past or present of the University, be substituted for the clerk to the justices (*q*).

Neglect to make return or making a false return.

If the secretary of any registered

(*o*) Licensing (Consolidation) Act, 1910, s. 92 (5).
(*p*) *Ibid.*, s. 92 (6).
(*q*) *Ibid.*, s. 92 (7).

club or any club which requires to be registered under this Act, omits to make any return required by this Act, he shall be liable on summary conviction (*r*) to a fine not exceeding £20, and in the case of a second or subsequent offence, to imprisonment with or without hard labour, for a term not exceeding three months, or to a fine not exceeding £50, or both (*s*).

In the application to London of the provisions of this Act relating to the registration of clubs, the clerk to the metropolitan police court, and the clerk of special sessions as respects the City of London, shall be substituted for the clerk to the justices (*t*). London.

(*r*) Licensing (Consolidation) Act, 1910, s. 99 (1).

NOTE.—As to position of new secretary where his predecessor has not made the returns, see *Booth* v. *Weightman* (1904), 91 L. T. 532.

(*s*) *Ibid.*, s. 97 (1). (*t*) *Ibid.*, s. 98.

Intoxicants in unregistered clubs.

If any intoxicating liquor is supplied or sold to any member or guest on the premises of an unregistered (*a*) club, the person supplying or selling the liquor, and every person authorising the supply or sale of the liquor shall be liable on summary conviction (*b*) to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding £50, or to both (*c*).

If any intoxicating liquor is kept for supply or sale on the premises of an unregistered club, every officer and member of the club shall be liable on

(*a*) Licensing (Consolidation) Act, 1910, s. 98. See s. 110: It means "a club which requires to be registered under this Act, but is not so registered, or which has been struck off the Register."

(*b*) *Ibid.*, s. 99 (1).

NOTE.—As to the meaning of "supply," see *Bailey* v. *Saunders* (1917), 86 L. J. K. B. 1066, 116 L. T. 573.

(*c*) *Ibid.*, s. 93 (1).

Summary Conviction (*d*) to a fine not exceeding £5, unless he proves to the satisfaction of the Court that such liquor was so kept without his knowledge or consent (*e*).

Supply for consumption off the premises.

Intoxicating liquor shall not be supplied in a club for consumption off the premises (*f*), except to a member on the premises; and if any person supplies or obtains any intoxicating liquor in contravention of the provisions of this section, he shall be liable on summary conviction (*g*) to a fine not exceeding £10.

Striking off register.

Where a club has been registered in pursuance of this Act, a court of

(*d*) Licensing (Consolidation) Act, 1910, s. 99 (1).

(*e*) *Ibid.*, s. 93 (2).

(*f*) Superseding *Davies* v. *Burnett*, [1902] 1 K. B. 666; see pp. 96, 97, *ante*.

(*g*) Licensing (Consolidation) Act, 1910, s. 94.

summary jurisdiction on complaint (*h*) in writing by any person, may, if they think fit, make an order directing the club to be struck off the register on all, or any of the following grounds (*i*) :

(1) That the club has ceased to exist, or that the number of members is less than twenty-five (25) ; or, (2) that it is not conducted in good faith as a club, or that it is kept or habitually used for any unlawful purpose (*k*) ; or, (3) that there is frequent drunkenness on the club premises ; or, (4) that illegal sales

(*h*) If summons granted on complaint, the summons must be served on the secretary, or such person, if any, as the court directs (*cp.* Licensing Act, 1902, s. 28).

(*i*) Licensing (Consolidation) Act, 1910, s. 95 (1). See also *Lees* v. *Lovie*, [1912] 2 K. B. 425) as to discretion of justices.

(*k*) In determining whether a club is conducted in good faith as a club, regard must be had to the nature of the premises occupied by the club : *ibid.*, s. 95 (2).

of liquor have taken place in the club premises; or, (5) that persons who are not members are habitually admitted to the club, merely for the purpose of obtaining intoxicating liquor; or, (6) that the club occupies premises in respect of which, within twelve months next preceding the formation of the club, a justice's licence has been forfeited or the renewal of a justice's licence has been refused (*l*), or in respect of which an order has been made that they shall not be used for the purposes of a club; or, (7) that persons are habitually admitted as members (*m*) without an interval of at least forty-eight (48) hours between

(*l*) As to when time runs for compensation purposes: *Plaistow W. M. Club* v. *Harrod*, [1910] 1 K. B. 582.

(*m*) In the writer's opinion, neither "temporary" nor "honorary" members are included: *ibid.*

their nomination and admission; or, (8) that the supply of intoxicating liquor to the club is not under the control of the members or the committee appointed by the members.

Power to prevent subsequent user of premises as a club.

Where an order is made striking the club off the register, the Court may by that order further direct that the premises occupied by the club shall not be used for the purposes of any club which requires to be registered under this Act, for a specified period, which may extend in the case of a first order to twelve (12) months, or in the case of a second or subsequent order to five (5) years; provided that such direction may for good cause shown, be subsequently cancelled or varied by the Court (*n*).

Effect of striking off: club

A club which has been struck off the

(*n*) Licensing (Consolidation) Act, 1910, s. 95 (4).

register of clubs under the above provisions of the Act of 1910, cannot again be registered under the Act, as a club, and the sale of liquor on the premises of such a club is a sale on the premises of an unregistered club (*o*). cannot be re-registered.

If a justice of the peace is satisfied by information on oath that there is a reasonable ground for supposing that any registered club is so managed or carried on as to constitute a ground for striking it off the register (*p*), or that any intoxicating liquor is sold or supplied, or kept for sale or supply on the premises of an unregistered club, he may grant a search warrant to any constable named therein (*q*). Such a warrant authorises the constable named Search warrants.

(*o*) *Lees* v. *Lovie*, [1912] 2 K. B. 425.
(*p*) As to grounds, see p. 130, *ante*.
(*q*) Licensing (Consolidation) Act, 1910, s. 96 (1).

to enter the club, if need be by force, and to inspect the premises of the club, to take the names and addresses of any persons found therein, and to seize any books and papers relating to the business of the club (*r*).

Use of club premises for election purposes.

Premises where intoxicating liquors are sold or supplied to members of a club, other than a permanent political club, may not be used as a committee room, or for holding a meeting, for the purpose of promoting or procuring the election of a candidate at any parliamentary or municipal election. Any person hiring or using such premises or part thereof for any such purpose, and also the person letting the premises, if he knows the purposes for which they are to be used, is guilty of illegal hiring (*s*).

(*r*) Licensing (Consolidation) Act, 1910, s. 96 (2).
(*s*) Corrupt and Illegal Practices Prevention Act,

A permanent political club means a club not formed for the purposes of the particular election, but founded with the *bonâ fide* intention of being continued for an indefinite period. If a room in such a club be used as a committee room in an election, it ought, during the election, to be placed under the sole control of the election agent, and no food or drink should be sold or supplied therein. If the club meets on licensed premises, its rooms cannot be used as committee rooms (*t*).

1883, s. 20; Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 16. This does not apply to any part of the premises ordinarily let for chambers or offices, or for holding public meetings or arbitrations, if such part has a separate entrance, and no direct communication with the portion of the premises where the liquor is sold or supplied. See Lord Halsbury's Laws of England, "Clubs" and "Elections."

(*t*) Corrupt and Illegal Practices Prevention Act, 1883, s. 20 (*a*) (*d*).

CHAPTER VIII.

BETTING AND GAMING IN CLUBS.

SECT. 1. BETTING.

SECT. 1, of the Betting House Act, 1853, is as follows: "No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof betting with persons resorting thereto. . . ."

Betting in a *bonâ fide* club.

On similar principles to these indicated when dealing with the application of the Licensing Acts prior to the Act of 1921 to clubs—a *bonâ fide* club is not subject to the provisions of this section. It is not illegal for members of such a club to bet with one another on the club premises (*a*).

Carrying the principle further, it has also been held that even where the members habitually bet with one another on the premises and there is a special room, or portion of the premises set apart for betting (*b*), it is not illegal, provided that the betting is strictly confined to members and that they bet with one another indiscriminately (*c*).

Is not illegal.

This decision of *Downes* v. *Johnson*

(*a*) *Oldham* v. *Ramsden* (1875), 32 L. T. 825.
(*b*) *Downes* v. *Johnson*, [1895] 2 Q. B. 203.
(*c*) *Oldham* v. *Ramsden*, *supra*.

has been distinguished and in the writer's opinion somewhat shaken by the following recent case. Where a portion of club premises is kept and used for the purpose of betting, all the facilities for carrying on a betting business being provided, to which place certain members of the club habitually resort, having particular places or pitches where they can be found, in order to carry on a betting business, by laying odds against horses running in horse-races with any member of the club that chooses to back them, the fact that the club is a *bonâ fide* social club, and that all the persons betting are members of the club, will not prevent proceedings being taken for an offence under ss. 1 and 3 of the Betting Houses Act, 1853 (*d*).

But club may be a club carried on as a *bonâ fide* social club,

yet where special portion set apart for the purpose of betting: illegal.

(*d*) *Jackson* v. *Roth and others*, [1919] 1 K. B. 102.

Darling, J., in his judgment, expressly says that in this case the evidence showed that the transactions complained of did not constitute a case of members of a *bonâ fide* club betting *inter se*, but that the purposes of the club as a social club were abused, and in fact many of the members actually carried on the business of bookmakers in a particular part of the club reserved for themselves. This being so, apparently, the fact that all the persons betting were members of the club did not take the case out of the statute. In the writer's opinion this decision carries more weight than the previous decision of *Downes* v. *Johnson*, even though it only purports to distinguish it.

Effect of judgment in *Jackson* v. *Roth*.

But if persons who are not members are admitted to the premises for the

Betting in pretended club.

purpose of betting with members, or if the club is not a *bonâ fide* club, but a "mere blind" for betting purposes, the provisions of the Act apply.

So where the evidence was that betting was carried on at a certain club but it appeared that the members of the club did not ordinarily bet with one another indiscriminately but that they were divided into two classes, defendants generally being the bookmakers laying the odds and the other members of the club betting with them: *Held*, there was some evidence upon which the jury could convict the defendants under the above Act, and under the Gaming Act, 1845 (*e*).

(*e*) *R.* v. *Corrie & Watson* (1904), 20 T. L. R. 365, C. C. R.; 68 J. P. 294; and *Oldham* v. *Ramsden*, *ante*. See also *R.* v. *Bradley, Fleming & another* (1908), 1 Cr. App. Rep. 146, C. C. A.

SECT. 2. GAMING.

Where gaming is unlawful.

Gaming at clubs may be unlawful either because the club premises constitute a common gaming house, in which all gaming, even at games which are not unlawful in themselves, is unlawful, or because the particular game itself is an unlawful game (*f*).

Where premises are a common gaming house.

A common gaming house may be defined as a place to which large numbers of persons are invited habitually to congregate for the purpose of unlawful gaming (*g*), and, in default of other evidence to show that a club is a common gaming house, it is sufficient to prove that it is used for the purpose of playing at any unlawful game in which a bank is kept by one or more players exclusively of others,

(*f*) *Jenks* v. *Turpin* (1884), 13 Q. B. D. 505, 513.
(*g*) *Ibid.*, p. 516.

Games of chance.

or that the chances of any game played there are not alike favourable to all, including the banker or other person by whom the game is managed or against whom the other players stake, play, or bet (*h*). And it has been decided that it is immaterial whether it is the owner or occupier of the premises, or one of the players who keeps the bank or manages the game; and a club may be a common gaming house although the gaming is restricted to members, and the club exists for other purposes than that of gaming (*i*).

Unlawful games.

Chemin-de-fer, baccarat (*k*), ace of hearts, faro (*l*), basset, hazard, roulette,

(*h*) Gaming Act, 1845, s. 2.

(*i*) *Jenks* v. *Turpin*, *supra*, p. 513. See also *Crackford* v. *Maidstone* (1846), 8 L. T. O. S. 217; 10 J. P. 807.

(*k*) *Ibid.*

(*l*) As to person buying bank at faro: *Darley* v. *Bloomfield* (1904), 91 L. T. 99.

any game with dice, except backgammon, all games of cards except games of mere skill, and any game of mere chance (*m*).

Functions of judge and jury.

Whether a certain game is lawful or not, is a question of law for the judge and not of fact for the jury (*n*), and it has been held that a game in itself lawful may become unlawful if played for money or money's worth (*o*).

Entry by police.

In the metropolitan police district the Commissioner of Police may authorise a superintendent to enter, by force, if necessary, any club suspected to be a common gaming house, and to search for or seize all instruments of gaming

(*m*) *Jenks* v. *Turpin*, *supra*.

(*n*) *R.* v. *Davies*, [1897] 2 Q. B. 199.

(*o*) *Dyson* v. *Mason* (1889), 22 Q. B. D. 351. As to playing for prizes: *Lockwood* v. *Cooper*, [1903] 2 K. B. 428.

and take into custody all persons found therein (*p*).

Elsewhere, by s. 3 of the Act, a constable may obtain similar powers from a magistrate to do likewise. Any person who is found on the premises and gives a false name or address or refuses to give any (*q*), or who wilfully delays or obstructs any officer so authorised is liable to a heavy penalty. If any cards, dice, tables, or other instruments of gaming used in playing an unlawful game are found on any premises so entered (*r*), or if any officer so authorised is wilfully delayed or obstructed, or any door or means of access to any part of the premises is found to be provided with any bolt,

(*p*) Gaming Act, 1845, ss. 6 and 7.
(*q*) Gaming Act, 1854, s. 3.
(*r*) Gaming Act, 1845, s. 8.

bar, or other contrivance for the purpose of preventing, delaying, or obstructing the entry into the premises any part thereof, or for giving alarm in case of entry by the police, that is *primâ facie* evidence of a common gaming house (*s*).

(*s*) Gaming Act, 1854, s. 2.

CHAPTER IX.

DISSOLUTION OF CLUBS.

Unincorporated members' clubs.

GENERALLY, where the club rules provide for its dissolution, or failing same, unless it clearly appears that the majority of the members desire to dissolve, or unless there are special circumstances which make it impossible or impracticable to continue to carry on the club—the Court will not interfere but will allow the members to have recourse to their rights under the rules.

Jurisdiction of High Court.

Though it has been questioned, and although clubs of this nature are not subject to the provisions of the Com-

panies Acts (*a*), it is settled law that the High Court has jurisdiction to dissolve and wind up an unincorporated members' club and an unregistered working men's club (*b*).

Compulsory winding-up of registered working men's club.

A working men's club registered under the Friendly Societies Act, 1896, may be wound up compulsorily as an unregistered society (*c*).

Division of property.

On dissolution the property and assets should be sold and realised, and after the discharge of the debts and liabilities of the club, the surplus should be equally divided amongst the members for the time being, other

(*a*) *Re St. James' Club* (1852), 2 De G. M. & G. 383, *ante*, p. 3; and see *Re Newcomble* (1908), Times, Oct. 21.

(*b*) Companies Act, 1862, s. 199. See *Blake* v. *Smither* (1906), 22 T. L. R. 698, *per* KEKEWICH, J.

(*c*) *Ibid.*, and see *Re Irish Mercantile Loan Society*, [1907] 1 I. R. 98.

than honorary members, subject to any provisions in the rules to the contrary (*d*).

An action will lie in the Chancery Division for the administration of the assests if it alleged that they are not being properly administered (*e*).

In such an action, where two of the members of the managing committee had obtained possession of the assets, and applied them in the winding-up, it was held that one member might, on behalf of himself and the other members, sue for an account of the receipts and disbursements, without asking for an order for a general winding-up by the Court (*f*).

(*d*) *Brown* v. *Dale* (1878), 9 Ch. D. 78.

(*e*) *Re St. James' Club*, *ante*; *Richardson* v. *Hastings* (1844), 7 Beav. 301.

(*f*) *Richardson* v. *Hastings* (1847), 11 Beav. 17.

Proprietary clubs.

In the absence of express agreement to the contrary the proprietor of such a club is only bound to carry it on to the date of expiration of current subscriptions, and he can therefore dissolve the club by refusing to accept any more subscriptions (*g*).

Incorporated clubs.

As mentioned before, the law as to these associations is regulated entirely by the provisions of the Companies Acts.

Registered working men's clubs.

These may be dissolved: (1) Upon the happening of any event declared by the rules to be the termination of the club; or, (2) by consent of three-fourths ($\frac{3}{4}$) of the members, testified by their signatures (*h*) to the instrument

(*g*) See Halsbury, Laws of England, "Clubs," "Dissolution."

(*h*) The instrument may be signed by a duly authorised agent: *Dennison* v. *Jeffs*, [1896] 1 Ch. 611.

of dissolution (*i*); or, (3) in certain cases (*k*) by the award of the Chief Registrar of Friendly Societies (*l*).

Shop clubs.

The dissolution and winding-up of shop clubs are matters which must be provided for by the rules of the club (*m*).

(*i*) See Friendly Societies Act, 1896, s. 79.
(*k*) *Ibid.*, s. 80.
(*l*) *Ibid.*, s. 78.
(*m*) See pp. 19 and 20, *ante*.

APPENDIX.

LICENSING ACT, 1921.

[11 & 12 Geo. 5, c. 42.]

An Act to amend the law relating to the sale and supply of intoxicating liquor, and for purposes in connection therewith.

[17th August 1921.]

Part I.

Conditions of Sales, &c., of Intoxicating Liquor.

Permitted hours on week days.

1.—(1) The hours during which intoxicating liquor may be sold or supplied on week days in any licensed premises or club, for consumption either on or off the premises, shall be as follows, that is to say: eight hours,

beginning not earlier than eleven in the morning and ending not later than ten at night, with a break of at least two hours after twelve (noon) :

Provided that—

(*a*) in the application of this provision to the metropolis " nine " shall be substituted for " eight," and " eleven at night " shall be substituted for " ten at night " ; and

(*b*) the licensing justices for any licensing district outside the metropolis may by order, if satisfied that the special requirements of the district render it desirable, make, as respects their district, either or both of the following directions—

(i) that this provision shall have effect as though " eight and a half " were substituted for " eight " and " half-past ten at night " were substituted for " ten at night " ;

(ii) that this provision shall have effect as though some hour specified

in the order earlier than eleven, but not earlier than nine, in the morning were substituted for "eleven in the morning."

(2) Subject to the foregoing provisions, the permitted hours on week days shall be such as may be fixed, in the case of licensed premises by order of the licensing justices of the licensing district, and in the case of a club in accordance with the rules of the club:

Provided that, pending any decision under this subsection, the permitted hours on week days shall be—

(*a*) in the metropolis, the hours between half-past eleven in the morning and three in the afternoon, and between half-past five in the afternoon and eleven at night; and

(*b*) elsewhere, the hours between half-past eleven in the morning and three in the afternoon, and between half-past five in the afternoon and ten at night.

Permitted hours on Sundays.

2.—(1) The hours during which intoxicating liquor may be sold or supplied on Sundays, Christmas Day and Good Friday in any licensed premises or club, for consumption either on or off the premises, shall be as follows, that is to say, five hours, of which not more than two shall be between twelve (noon) and three in the afternoon, and not more than three between six and ten in the evening :

Provided that in Wales and Monmouthshire there shall be no permitted hours for licensed premises on Sundays, or on Christmas Day when it falls on a Sunday.

(2) Subject to the foregoing provisions, the permitted hours on Sundays shall be such as may be fixed, in the case of licensed premises by order of the licensing justices of the licensing district, and in the case of a club in accordance with the rules of the club :

Provided that, pending any decision under this subsection, the permitted hours on Sundays, Christmas Day and Good Friday,

shall be the hours between half-past twelve and half-past two in the afternoon, and the hours between seven and ten in the evening.

Special provision as to extension of permitted hours in the evening in certain premises.

3.—(1) The provisions of this Act as to permitted hours on week days shall, as respects licensed premises or clubs to which this section applies, have effect, if the holder of the licence or the committee of the club so elects, as though one hour were added at the end of the permitted hours in the evening :

Provided that any intoxicating liquor sold or supplied during that hour shall be sold or supplied only for consumption at a meal supplied at the same time in such portion of the premises as is usually set apart for the service of meals, and no person shall consume or be permitted to consume any intoxicating liquor on the premises during that hour except at such meal, and any drinking bar in the said premises shall be closed during that hour.

(2) This section applies to any licensed premises or clubs if and so long as the

licensing justices are satisfied that they are structurally adapted and bonâ fide used or intended to be used for the purpose of habitually providing, for the accommodation of persons frequenting the premises, substantial refreshment, to which the sale and supply of intoxicating liquor is ancillary.

(3) The holder of the licence, or the secretary of the club, shall give not less than fourteen days' previous notice in writing to the superintendent of the police of the district wherein the premises are situate of the date on which he intends to begin to avail himself of the provisions of this section; and on and after that date shall affix and keep permanently affixed in some conspicuous place in the premises a notice to the effect that the provisions of this section apply to the premises; and the said provisions shall apply accordingly for the period of the current licensing year, and shall continue to apply unless the holder of the licence or secretary gives not less than fourteen days' notice in writing before the expiration of any licensing

year to the superintendent of the police aforesaid that he intends to cease to avail himself of the provisions of this section, in which case the said provisions shall cease to apply at the end of that year.

Effect of restricted hours.

4. Subject to the provisions of this Part of this Act, no person shall, except during the permitted hours—

(*a*) either by himself, or by any servant or agent, sell or supply to any person in any licensed premises or club any intoxicating liquor to be consumed either on or off the premises ; or

(*b*) consume in or take from any such premises or club any intoxicating liquor.

Exemptions and saving provisions.

5. Nothing in the foregoing provisions of this Part of this Act shall be deemed to prohibit or restrict—

(*a*) the sale or supply to, or consumption by, any person of intoxicating liquor in any licensed premises or club where he is residing ; or

(*b*) the ordering of intoxicating liquor

to be consumed off the premises, or the despatch by the vendor of liquor so ordered; or

(*c*) the supply of intoxicating liquor for consumption on licensed premises to any private friends of the holder of the licence bonâ fide entertained by him at his own expense, or the consumption of intoxicating liquor by persons so supplied; or

(*d*) the consumption of intoxicating liquor with a meal by any person in any licensed premises or club at any time within half an hour after the conclusion of the permitted hours, provided that the liquor was supplied during permitted hours and served at the same time as the meal and for consumption at the meal; or

(*e*) the sale of intoxicating liquor to a trader for the purposes of his trade, or to a club for the purposes of the club; or

(*f*) the sale or supply of intoxicating

liquor to or in any canteen where the sale of intoxicating liquor is carried on under the authority of a Secretary of State or the Admiralty, or to any authorised mess of officers or non-commissioned officers of his Majesty's naval, military or air forces.

Application and adaptation of Licensing Act. 10 Edw. 7. & 1 Geo. 5. c. 24.

6.—(1) The foregoing provisions of this Act shall have effect in lieu of section fifty-four of, and the Sixth Schedule to, the Licensing (Consolidation) Act, 1910, but (subject as hereinafter provided in this Act), all the other provisions of that Act with respect to closing hours shall continue in force.

(2) The provisions of the Licensing (Consolidation) Act, 1920, specified in Part I. of the First Schedule to this Act shall be repealed, and the provisions of that Act specified in Part II. of that Schedule shall have effect subject to the modifications provided for in that Part of that Schedule.

Conditions as to

7.—(1) No person shall either by himself or by any servant or agent—

distribution.

(*a*) sell, supply, distribute, or deliver, or induce any person to sell, supply, distribute or deliver any intoxicating liquor from any van, barrow, basket or other vehicle or receptacle, unless before the liquor is despatched it has been ordered and the quantity, description and price thereof, together with the name and address of the person to whom it is to be supplied has been entered in a delivery book or invoice, which shall be carried by the person delivering the liquor, and in a day book which shall be kept on the premises from which the liquor is despatched; or

(*b*) carry or convey in any van, barrow, basket or other vehicle or receptacle, while in use for the distribution or delivery of intoxicating liquor, any such liquor not entered in such delivery book or invoice and day book; or

(*c*) distribute or deliver any intoxi-

cating liquor at any address not specified in such delivery book or invoice and day book; or

(*d*) refuse to allow any constable to examine such van, barrow, basket or other vehicle or receptacle, or such delivery book or invoice:

Provided that the holder of a licence shall not be liable to any penalty under this section in respect of an offence committed by his servant or agent if he proves that such offence was committed without his knowledge or consent.

(2) Nothing in this section shall be deemed to prohibit or restrict the sale, supply, distribution, or delivery of intoxicating liquor to a trader for the purposes of his trade, or to a club for the purposes of the club.

Restriction on credit for on-sales.

8.—(1) No person shall—

(*a*) either by himself or by any servant or agent sell or supply in any licensed premises or club any intoxicating liquor to be consumed on the premises; or

(*b*) consume any intoxicating liquor in such premises or club ;

unless it is paid for before or at the time when it is sold or supplied :

Provided always that, if the liquor is sold or supplied for consumption with a meal supplied at the same time and is consumed with such meal, this provision shall not be deemed to be contravened if the price of the liquor is paid together with the price of such meal.

(2) Nothing in this section shall be deemed to prohibit or restrict the sale or supply of intoxicating liquor to or in any canteen where the sale of intoxicating liquor is carried on under the authority of a Secretary of State or the Admiralty or to any authorised mess of officers or non-commissioned officers of His Majesty's naval, military or air forces.

Long pull prohibited.

9. No person, shall, either by himself or by any servant or agent in any licensed premises or club, sell or supply to any person, as the measure of intoxicating liquor for

which he asks, an amount exceeding that measure.

Strength of spirits.

10. In determining whether an offence has been committed under the enactments relating to the sale of food and drugs by selling to the prejudice of the purchaser whisky, brandy, rum or gin not adulterated otherwise than by any admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than thirty-five degrees under proof, and section six of the Sale of Food and Drugs Act, 1879, is hereby repealed. 42 & 43 Vict. c. 30.

Certain liquor not to be treated as an intoxicating liquor if excise licence not required for its sale. 3 Ed. 7. c. 25.

11. If, under the laws relating to the excise for the time being in force, any liquor, being liquor to which this section applies, may be sold, whether wholesale or by retail, without an excise licence, that liquor shall not be deemed to be beer or an intoxicating liquor within the meaning of the Licensing (Consolidation) Act, 1910, or to be beer or an exciseable liquor within the meaning of the Licensing (Scotland) Act, 1903.

The liquor to which this section applies is any liquor which, whether made on the licensed premises of a brewer of beer for sale or elsewhere, is found, on analysis of a sample thereof at any time, to be of an original gravity not exceeding one thousand and sixteen degrees and to contain not more than two per cent. of proof spirit.

Supplementary provisions as to orders of licensing justices.

12.—(1) The powers of the licensing justices under this Part of this Act may be exercised by them, in accordance with such procedure as may be prescribed by rules made by the Secretary of State, at their general annual licensing meeting, or at any transfer sessions held before the first general annual licensing meeting held after the passing of this Act.

(2) Subject to the provisions of this Act, and of the Licensing (Consolidation) Act, 1910, an order of licensing justices under this Part of this Act—

(*a*) shall apply to all licensed premises and, if applicable to clubs, to all clubs in their district; and

(*b*) may be varied by a subsequent order; and

(*c*) shall be published in such manner as the Secretary of State may prescribe.

(3) A document purporting to be issued by licensing justices under this Part of this Act shall be evidence of the contents thereof.

Statement to be included in club rules.

13. The rules of every club contained in the register required to be kept under section ninety-two of the Licensing (Consolidation) Act, 1910, shall include a statement of the permitted hours applicable to that club.

Penalties.

14. If any person contravenes or fails to comply with any provision of this Part of this Act, he shall be guilty of an offence against this Act, and any person guilty of an offence against this Act shall be liable on summary conviction to a fine not exceeding thirty pounds.

Section 6.

FIRST SCHEDULE.

Part I.

Provisions of Licensing (Consolidation) Act, 1910, repealed.

Section fifty-four.

Section fifty-six.

Subsection (2) of section fifty-eight from "and the provisions of this Act" to the end of the subsection.

Section sixty-one.

Section sixty-two.

The sixth schedule.

Part II.

Modifications of Licensing (Consolidation) Act, 1910.

In sections fifty-five, fifty-seven, fifty-nine, and eighty-four, the reference to the provisions of that Act relating to general closing hours shall be deemed to be a reference to the provisions of this Act as to permitted hours.

Sections fifty-five and fifty-seven shall apply to

clubs as they apply to licensed premises with the substitution of references to the secretary of the club for references to the holder of a justices' on-licence.

In section fifty-nine the reference to the sixth schedule of that Act shall be deemed to be a reference to the provisions of this Act as to permitted hours.

Section sixty-four shall have effect notwithstanding the provisions of this Act as to permitted hours.

THE LICENSING RULES, 1921,

DATED AUGUST 18, 1921, MADE BY THE SECRETARY OF STATE UNDER SECTION 12 OF THE LICENSING ACT, 1921 (11 & 12 GEO. 5, C. 42).

In pursuance of the powers conferred upon me by section twelve of the Licensing Act, 1921 (hereinafter referred to as "the Act"), I hereby make the following Rules with respect to the procedure of licensing justices in the exercise of the powers conferred upon them under Part I of the Act :—

1. These Rules may be cited as the Licensing Rules, 1921.

2. The powers exerciseable by licensing justices under the Act are :—

(*a*) The power of making orders under section 1 (1) (*b*) of the Act.

(*b*) The power of making orders under sections 1 (2) and 2 (2) of the Act.

(*c*) The power of granting certificates under section 3 (2) of the Act.

3. These powers are ordinarily exerciseable by licensing justices at their general annual licensing meeting, but they are exerciseable also at any transfer sessions held between the passing of the Act and the general annual licensing meeting in 1922.

4. Where it is intended to consider any proposal to make or vary any order referred to in paragraphs (*a*) or (*b*) of rule 2 the clerk to the justices shall cause a notice thereof in Form I as set out in the schedule to these rules, or a form to the like effect, to be published in two local newspapers circulating in the licensing district, and, if the justices

think fit, in such further manner as they may direct.

5. Upon the consideration of any proposal referred to in the preceding rule, the justices shall take such steps as seem to them fit for the purpose of ascertaining local opinion with respect to the matter in hand, and shall allow any person to address them who appears to them to be qualified to give expression to any such opinion.

6. The certificate referred to in paragraph (*c*) of rule 2 shall not be granted unless the applicant for the certificate has, one week at least before the meeting or sessions at which the application is made, sent to the superintendent of police of the district and to the clerk to the licensing justices notice of his intention to make the application. The notice shall be signed by the applicant or by his authorised agent and shall state the address of the licensed premises or club in respect of which the application is made. The notice to the superintendent may specify the date (not being less than fourteen days

later) on which, if a certificate is granted, the applicant intends to begin to avail himself of the provisions of section 3 of the Act, and where a date is so specified the notice will, if a certificate is granted, be sufficient compliance with the provisions of that section requiring notice to be given to the superintendent of the police.

The justices shall satisfy themselves in such manner as they think fit as to whether the arrangement of the premises and the nature of the business there carried on are such as to justify the grant of a certificate having regard to the provisions of the said section 3.

7. If any question arises as to the withdrawal of any such certificate, notice in writing may be served on the holder of the certificate, not less than seven days before the commencement of the general annual licensing meeting; and where such notice has been served the justices shall consider whether the certificate shall be withdrawn, and in any such case the procedure before

the justices shall be the same, *mutatis mutandis*, as in the case of opposition to the renewal of a licence, and the provisions of the Licensing (Consolidation) Act, 1910 (*a*), in relation to such procedure shall apply accordingly, with the necessary modifications.

8. Any orders or certificates made or granted under the Act and these rules shall be in the appropriate form set out in the schedule to these rules, or in a form to the like effect. Any orders made by justices under the Act and these rules shall be published in the manner prescribed by rule 4 hereof.

9. Subject as aforesaid the powers of justices under the Act at any meeting or sessions shall be exercised in accordance with the procedure ordinarily adopted with respect to other business transacted thereat, and any provisions of the Licensing (Consolidation) Act, 1910, in relation to such procedure shall apply accordingly.

SCHEDULE.

FORM I.

Form of Notice.

Licensing Acts, 1910 *and* 1921.

Notice is hereby given that at the general annual licensing meeting [*or* transfer sessions], to be held at on the day of , a proposal will be considered for modifying in accordance with paragraph (*b*) of sub-section (1) of section one of the Licensing Act, 1921, the hours applicable to licensed premises and clubs in the licensing district [*or* for fixing, within the prescribed limits, in accordance with sub-section (2) of section one [*and*/*or* sub-section (2) of section two] of the Licensing Act, 1921, the permitted hours for licensed premises in the licensing district].

Signed
[Clerk to the Licensing Justices.]

FORM II.

Licensing Acts, 1910 *and* 1921.

Order under section 1 (1) (*b*) of the Licensing Act, 1921.

At the general annual licensing meeting [*or* transfer sessions] holden at on the day of , for the division of in the county of , [*or* for the [county] borough of].

The licensing justices for the said division [*or* borough] by order hereby direct that as respects licensed premises and clubs in the said division [*or* borough] sub-section (1) of section one of the Licensing Act, 1921, shall have effect as though "eight and a half" were substituted for "eight" and "half-past ten at night" were substituted for "ten at night" [*or* as though " in the morning" were substituted for "eleven in the morning"].

[*Justices' signatures and seals.*]

FORM III.

Licensing Acts, 1910 *and* 1921.

Order under sub-section (2) of section one (*or* sub-section (2) of section two] of the Licensing Act, 1921.

At the general annual licensing meeting [*or* transfer sessions] holden at on the day of , for the division of in the county of [or for the [county] borough of].

The licensing justices for the said division [*or* borough] hereby order that as respects licensed premises in the said division [*or* borough] the permitted hours on weekdays [*or* Sundays, Christmas Day and Good Friday] shall be the hours between and , and between and

[*Justices' signatures and seals.*]

FORM IV.

Licensing Acts, 1910 *and* 1921.

Certificate under section 3 (2) of the Licensing Act, 1921.

At the general annual licensing meeting [or transfer sessions] holden at on the day of , for the division of in the county of [*or* for the [county] borough of].

The licensing justices for the said division [*or* borough] hereby certify that they are satisfied that the licensed premises [*or* club], known as , are [*or* is] structurally adapted and *bonâ fide* used [*or* intended to be used] for the purpose of habitually providing, for the accommodation of persons frequenting the premises, substantial refreshment, to which the sale and supply of intoxicating liquor is ancillary.

[*Justices' signatures and seals.*]

E. Shortt,
One of His Majesty's Principal Secretaries of State.

Home Office,
18th August, 1921.

THE FRIENDLY SOCIETIES ACT, 1896.

(59 & 60 VICT. c. 25.)

Conditions of registration.

9.—(1) A society shall not be registered under this Act unless it consists of seven persons at least.

(2) For the purpose of registry there shall be sent to the registrar an application to register the society, signed by seven members and the secretary, and copies of the rules, together with a list of the names of the secretary and of every trustee or other officer intended to be authorised to sue and be sued on behalf of the society.

(3) The rules of the society so sent shall, according to the class in which the society is to be registered, contain provisions in respect of the several matters mentioned in the First Schedule to this Act.

(4) If the list is signed by the secretary and every trustee and other officer named therein,

it shall on the registry of the society be evidence that the persons so named have been duly appointed.

Name of society.

10. A society shall not be registered under a name identical with that under which any other existing society is registered, or so nearly resembling that name as to be likely, or in any name likely, in the opinion of the registrar, to deceive the members or the public as to its nature or its identity.

Acknowledgment of registry.

11. The registrar, on being satisfied that a society has complied with the provisions of this Act as to registry, shall issue to that society an acknowledgment of registry specifying the designation of the society, according to the classification set forth in this Act, and this acknowledgment shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registry of the society has been suspended or cancelled.

Appeals from refusal to register.

12.—(1) From a refusal to register a society an appeal shall lie as follows :—

(*a*) if the assistant registrar for Scotland or for Ireland refuses to register, the

society may appeal to the chief registrar, and if he refuses, to the Court of Session in Scotland, or to the High Court in Ireland:

(*b*) if the central office refuse, the society may appeal to the High Court in England.

(2) If the refusal to register is overruled on appeal, the registrar shall give an acknowledgment of registry to the society.

Registry of amendments of rules.

13.—(1) An amendment of a rule made by a registered society shall not be valid until the amendment has been registered under this Act, for which purpose copies of the amendment, signed by three members and the secretary, shall be sent to the registrar.

(2) The registrar shall, on being satisfied that any amendment of a rule is not contrary to the provisions of this Act, issue to the Society an acknowledgment of registry of the amendment, and that acknowledgment shall be conclusive evidence that the amendment is duly registered.

(3) The provisions of this Act as to appeals from a refusal to register a society shall apply

to a refusal to register an amendment of a rule (*a*).

CONSEQUENCES OF REGISTRY.

23. The subscription of a person being or having been a member of a registered society or branch shall not be recoverable at law. Subscription not recoverable at law.

24.—(1) Every registered society and branch shall have a registered office to which Registered office.

(*a*) Trustees elected according to new rules which had not been confirmed were held to be not lawfully elected, and unable to maintain an action (*Battey* v. *Townrow*, 4 Camp. 5). Where new rules had been made and acted on for over thirty years, but by inadvertence had not been confirmed, they were held invalid. The old rules were, however, *semble*, treated as abandoned (*R.* v. *Godolphin*, 8 A. & E. 338). But generally where new rules are invalid the old remain in force (*R.* v. *Cotton*, 15 Q. B. 569); or where the alterations have not been confirmed or certified (*Re Meredith*, 1 C. B. N. S. 216). The certificate of the registrar is, however, no bar to a challenge in a Court of competent jurisdiction (*Davie* v. *Colinton Friendly Society*, 9 Macph. 96; *Laing* v. *Reed*, 5 Ch. 4). But an amendment which is registered is valid notwithstanding irregularity in the mode of registration (*Dewhurst* v. *Clarkson*, 3 E. & B. 194; *Rosenberg* v. *Northumberland Building Society*, 22 Q. B. D. 373). See *Osborne* v. *Amalgamated Socy. of Rly. Servants*, [1909] 1 Ch. 163.

all communications and notices may be addressed, and shall send to the registrar notice of the situation of that office, and of every change therein.

(2) In the case of a branch the notice shall be sent to the registrar through an officer appointed in that behalf by the society of which the branch forms part.

Appointment of trustees.

25.—(1) Every registered society and branch shall have one or more trustees.

(2) The trustees shall be appointed at a meeting of the society or branch, and by a resolution of a majority of the members present and entitled to vote thereat.

(3) The society or branch shall send to the registrar a copy of every resolution appointing a trustee, signed by the trustee so appointed, and by the secretary of the society or branch.

(4) The same person shall not be secretary or treasurer of a registered society or branch, and a trustee of that society or branch.

(5) In the case of a branch the copy of the resolution shall be sent to the registrar through an officer appointed in that behalf by the society of which the branch forms part.

26.—(1) Every registered society and branch shall once at least in every year submit its accounts for audit either to one of the public auditors appointed as in this Act mentioned, or to two or more persons appointed as the rules of the society or branch provide. Audit.

(2) The auditors shall have access to all the books and accounts of the society or branch, and shall examine the annual return mentioned in this Act, and verify the annual return with the accounts and vouchers relating thereto, and shall either sign the annual return as found by them to be correct, duly vouched, and in accordance with law, or specially report to the society or branch in what respects they find it incorrect, unvouched, or not in accordance with law.

27.—(1) Every registered society and branch shall once in every year, not later than the thirty-first day of May, send to the registrar a return (in this Act called the annual return) of the receipts and expenditure, funds, and effects of the society or branch as audited. Annual returns.

(2) The annual return must—

(*a*) show separately the expenditure in respect of the several objects of the society or branch; and

(*b*) be made out to the thirty-first day of December then last inclusively; and

(*c*) state whether the audit has been conducted by a public auditor appointed as by this Act provided, and by whom, and, if by persons other than a public auditor, state the name, address, and calling or profession of every such person, and the manner in which, and the authority under which, he is appointed.

(3) The society or branch shall, together with the annual return, send a copy of any special report of the auditors.

(4) In the case of a branch the annual return shall be sent to the registrar through an officer appointed in that behalf by the society of which the branch forms part.

Copy of last balance sheet.

29. Every registered society or branch shall keep a copy of the last annual balance sheet, together with any special report of the

auditors, always hung up in a conspicuous place at the registered office of the society or branch.

Public auditors and valuers.

30.—(1) For the purpose of audits and valuations to be made under this Act the Treasury may appoint public auditors and valuers and may determine the rates of remuneration to be paid by societies and branches for the services of those auditors and valuers; but the employment of those auditors and valuers shall not be compulsory.

(2) The Treasury may out of money to be provided by Parliament pay to the public auditors and valuers such remuneration (if any) as the Treasury may allow.

PRIVILEGES OF REGISTERED SOCIETIES.

Exception of societies from corresponding Societies Acts, etc 39 Geo. 3, c. 79. 57 Geo. 3, c. 19.

32.—(1) A registered society or branch or a meeting of a registered society or branch shall not be affected by any of the provisions of the Unlawful Societies Act, 1799, or of the Seditious Meetings Act, 1817, if in the society or branch or at the meeting no business is transacted other than that which directly and immediately relates to the objects of the

society or branch as declared in the rules thereof; but the society or branch, and all officers thereof shall, on request in writing by two justices of the peace, give to such justices full information of the nature, objects, proceedings, and practices of the society or branch.

(2) If the society or branch when so required fails to give such information as aforesaid, the provisions of those Acts shall, so far as applicable, be in force in respect of the society or branch.

Exemptions from stamp duty.

33. Stamp duty shall not be chargeable upon any of the following documents :—

(*a*) Draft or order or receipt given by or to a registered society or branch in respect of money payable by virtue of its rules or of this Act :

(*b*) Letter or power of attorney granted by any person as trustee for the transfer of any money of a registered society or branch invested in his name in the public funds :

(*c*) Bond given to or on account of a registered society or branch or by the treasurer or other officer thereof :

(*d*) Policy of insurance or appointment or revocation of appointment of agent or other document required or authorised by this Act or by the rules of a registered society or branch.

Transfer of stock standing in name of trustee.

34.—(1) In any of the following cases, namely :—

(i) where a person being or having been a trustee of a registered society or branch, and whether appointed before or after the registry thereof, in whose name any stock belonging to that society or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely—

(*a*) is absent from the British Islands ; or

(*b*) becomes bankrupt or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors ; or

(*c*) becomes lunatic or is dead ; or

(*d*) has been removed from his office of trustee ; or

(ii) if it is unknown whether such person is living or dead,

the chief registrar may, on application in writing from the secretary and three members of the society or branch, and on proof satisfactory to him, direct the transfer of the stock into the names of any other persons as trustees for the society or branch.

(2) The transfer shall be made by the surviving or continuing trustees, or if there is no such trustee, or if the trustees refuse or are unable to make the transfer, and the chief registrar so directs, then by the Accountant General or deputy or Assistant Accountant General of the Bank of England or Bank of Ireland, as the case may be.

(3) The Bank of England and the Bank of Ireland are hereby indemnified for anything done by them or any of their officers in pursuance of this section against any claim or demand of any person injuriously affected thereby.

Priority on death, bankruptcy,

35.—(1) In the following cases, namely—

(*a*) upon the death or bankruptcy of any officer of a registered society or branch

having in his possession by virtue of his office any money or property belonging to the society or branch; or

etc., of officer.

(*b*) if any execution, attachment, or other process is issued, or action or diligence raised against any such officer or against his property,

his heirs, executors, or administrators, or trustee in bankruptcy, or the sheriff or other person executing the process, or the party using the action or diligence respectively shall, upon demand in writing of the trustees of the society or branch, or of any two of them, or of any person authorised by the society or branch, or by the committee thereof, to make the demand, pay the money, and deliver over the property to the trustees of the society or branch in preference to any other debt or claim against the estate of the officer.

(2) In this section the expression "bankruptcy" shall include liquidation of a debtor's affairs by arrangement in England, *cessio bonorum* of a debtor in Scotland, and a

petition for arrangement with creditors in Ireland; and the expression "trustee in bankruptcy" shall include a judicial factor in Scotland, and an assignee in Ireland.

Membership of minors.

36.—(1) The rules of a registered society or branch may provide for the admission of a person under twenty-one years of age (*b*) as a member.

(2) Any such member may, if he is over sixteen years of age by himself, and if he is under that age by his parent or guardian, execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee, or a trustee, manager, or treasurer of the society or branch.

Right of Members.

38. [Right to supply of copies of the rules.]

39. [Right to supply of copies of annual return.]

40. [Inspection of books by members.]

(*b*) 8 Ed. 7, c. 32, s. 2.

PROPERTY, FUNDS, AND INVESTMENTS.

Investment of funds.

44.—(1) The trustees of a registered society or branch may, with the consent of the committee or of a majority of the members present and entitled to vote in general meeting, invest the funds of the society or branch or any part thereof, to any amount in any of the following ways :

(*a*) in the Post Office Savings Bank, or in any savings bank certified under the Trustee Savings Bank Act, 1863 ; or 26 & 27 Vict. c. 87.

(*b*) in the public funds ; or

(*c*) with the National Debt Commissioners as in this Act provided ; or

(*d*) in the purchase of land, or in the erection or alteration of offices or other buildings thereon ; or

(*e*) upon any other security expressly directed by the rules of the society or branch, not being personal security except as in this Act authorised with respect to loans ; or

(*f*) If any investment in which trustees are for the time being by law authorised to invest trust funds (*c*).

(*c*) 8 Ed. 7, c. 32, s. 4.

(2) The rules of a society with branches and of any branch thereof may provide for the investment of funds of the society or of that branch by the trustees of any branch, or by the trustees of the society, and the consent of the committee, or of such majority as aforesaid of the society or branch by whom the funds are invested.

47. [Holding of land.]

48. [Copyholds.]

Vesting of property.

49.—(1) All property belonging to a registered society, whether acquired before or after the society is registered, shall vest in the trustees for the time being of the society, for the use and benefit of the society and the members thereof, and of all persons claiming through the members according to the rules of the society.

(2) The property of a registered branch of a society shall vest wholly or partly in the trustees for the time being of that branch or of any other branch of which that branch forms part (or, if the rules of the society so provide, in the trustees for the time being of the society), for the use and benefit either of

the members of any such branch and persons claiming through those members, or of the members of the society generally, and persons claiming through them, according to the rules of the society.

(3) The trustees shall not be liable to make good any deficiency in the funds of the society or branch, but shall be liable only for sums of money actually received by them respectively on account of the society or branch (*d*).

Devolution on death.

50. Upon the death, resignation, or removal of a trustee of a registered society or branch, the property vested in that trustee shall, without conveyance or assignment, and whether the property is real or personal, vest, as personal estate subject to the same trusts, in the succeeding trustees of that society or branch either solely or together with any surviving or continuing trustees, and, until

(*d*) Trustees who dispose of property as the committee direct are not liable if such disposition is contrary to the rules (*Grimes* v. *Harrison*, 26 Beav. 435). But if they are held liable under a contract *ultra vires* they cannot call on the members to recoup them (*Re Kent Benefit Building Society*, 1 Dr. & S. 417).

the appointment of succeeding trustees, shall so vest in the surviving or continuing trustees only, or in the executors or administrators of the last surviving or continuing trustee, except that stocks and securities in the funds of Great Britain and Ireland shall be transferred into the names of the succeeding trustees, either solely or jointly with any surviving or continuing trustees.

Description in legal proceedings.

51. In all legal proceedings whatsoever concerning any property vested in the trustees of a registered society or branch, the property may be stated to be the property of the trustees in their proper names as trustees for the society or branch without further description.

52. [Investments with the National Debt Commissioners.]

Discharge of mortgages by receipt endorsed.

53.—(1) A receipt under the hands of the trustees of a registered society or branch, countersigned by the secretary, for all sums of money secured to the society or branch by any mortgage or other assurance, being in the form prescribed by this Act, if endorsed upon or annexed to the mortgage or other

assurance, shall vacate the mortgage or assurance and vest the property therein comprised in the person entitled to the equity of redemption of that property, without reconveyance or resurrender.

(2) If the mortgage or other assurance has been registered under any Act for the registration or record of deeds or titles, or is of copyholds or of lands of customary tenure and entered on any court rolls, the registrar under any such Act, or recording officer, or steward of the manor, or keeper of the register, shall on production of the receipt, verified by oath of any person, enter satisfaction of the mortgage or charge made by the assurance on the register or court rolls, and shall grant a certificate, either upon the mortgage or assurance, or separately to the like effect.

(3) The certificate shall be received in evidence in all courts and proceedings without further proof.

(4) The person making the entry shall be entitled for making the said entry and granting the said certificate to a fee of two shillings and sixpence, which in Ireland shall be paid

by stamps and applied in accordance with the Public Offices Fees Act, 1879.

42 & 43 Vict. c. 58.

(5) This section shall not extend to Scotland or the Island of Jersey.

OFFICERS IN RECEIPT OR CHARGE OF MONEY.

Security by officers.

54. Every officer of a registered society or branch having receipt or charge of money shall, if the rules of the society or branch so require, before taking upon himself the execution of his office, become bound with one sufficient surety at the least in a bond or give the security of a guarantee society, in such sum as the society or branch directs, conditioned for his rendering a just and true account of all sums of money received and paid by him on account of the society or branch at such times as its rules appoint, or as the society or branch or the trustees or committee thereof require him to do, and for the payment by him of all sums due from him to the society or branch.

Accounts of officers.

55.—(1) Every officer of a registered society or branch having receipt or charge of any money shall, at such times as by the rules of

the society or branch he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society or branch, or by the trustees or committee thereof, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all sums of money and deliver all property in his hands or custody to such person as the society or branch, or the committee or the trustees, appoint.

(2) In case of any neglect or refusal to deliver the account, or to pay over the sums of money or to deliver the property in manner aforesaid, the trustees or authorised officers of the society or branch may sue upon the bond or security before mentioned, or may apply to the county court or to a court of summary jurisdiction, and the order of either such court shall be final and conclusive.

DISPUTES.

Decision of disputes.

68.—(1) Every dispute between—

(*a*) a member or person claiming through

a member or under the rules of a registered society or branch, and the society or branch or an officer thereof; or

(*b*) any person aggrieved who has (*e*) ceased to be a member of a registered society or branch, or any person claiming through such person aggrieved, and the society or branch, or an officer thereof; or

(*c*) any registered branch of any society or branch and the society or branch of which it is a branch; or

(*d*) an officer of any such registered branch and the society or branch of which that registered branch is a branch; or

(*e*) any two or more registered branches of any society or branch, or any officers thereof respectively,

shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be

(*e*) 8 Edw. 7, c. 32, s. 6. See the definition of dispute there given.

removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the county court (*f*).

(2) The parties to dispute in a registered society or branch may, by consent (unless the rules of the society or branch expressly forbid it), refer the dispute to the chief registrar, or in Scotland or Ireland to the assistant registrar.

(3) The chief or other registrar to whom a dispute is referred shall, with the consent of the Treasury, either by himself or by any other registrar, hear and determine the dispute, and shall have power to order the expenses of determining the dispute to be paid either out of the funds of the society or branch, or by such parties to the dispute as he may think fit, and his determination and order shall have the same effect and be enforceable in like manner as a decision made

(*f*) See *Hoey* v. *McFarlane*, 4 C. B. N. S. 718; *Trott* v. *Hughes*, 16 L. T. 260; *Prentice* v. *London*, L. R. 10 C. P. 679; *Willis* v. *Wells*, [1892] 2 Q. B. 225; *Palliser* v. *Dale*, [1897] 1 Q. B. 257; *Andrews* v. *Mitchell*, [1905] A. C. 78.

in the manner directed by the rules of the society or branch.

(4) The chief or other registrar to whom a dispute is referred may administer oaths, and may require the attendance of all parties concerned, and of witnesses, and the production of all books and documents relating to the matter in question.

(5) Where the rules of a registered society or branch direct that disputes shall be referred to justices, the dispute shall be determined by a court of summary jurisdiction, or, if the parties thereto consent, by the county court (*g*).

(6) Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society or branch for a reference under its rules, the member or person aggrieved may apply either to the county court, or to a court of summary jurisdiction, and the court to which application is so made may hear and determine the matter in dispute; but in the case of a society with

(*g*) See *Bache* v. *Billingham*, [1894] 1 Q. B. 107.

branches the said forty days shall not begin to run until application has been made in succession to all the bodies entitled to determine the dispute under the rules of the society or branch, so however that no rules shall require a greater delay than three months between each successive determination (*h*).

(7) Notwithstanding anything contained in the Arbitration Act, 1889, or in any other Act, the court and the chief or other registrar or any arbitrator or umpire to whom a dispute is referred under the rules of a registered society or branch shall not be compelled to state a special case on any question of law arising in the case, but the court, or chief or other registrar, may, at the request of either party, state a case for the opinion in England or Ireland of the Supreme Court, and in Scotland of either division of the Inner 53 & 54 Vict. c. 49.

(*h*) Where a member of a branch society was excluded therefrom by the branch committee, and appealed under the rules of the branch to the general committee of the society, who failed to decide the dispute within forty days, the appeal was held "a reference" within this sub-section, and the county court had jurisdiction to hear and determine the matter in dispute (*Reg.* v. *Catley*, 19 Q. B. D. 491).

House of the Court of Session, on any question of law, and may also grant to either party such discovery as to documents and otherwise or such inspection of documents, and in Scotland may grant warrant for the recovery of documents and examination of havers, as might be granted by any court of law or equity, and the discovery shall be made on behalf of the society or branch by such officer thereof as the court or registrar may determine.

Change of Name, Amalgamation, and Conversion of Societies.

69. [Power to change name.]

70. [Amalgamation and transfer of engagements (*i*).]

(*i*) The committee of a friendly society having agreed for the amalgamation of the society with another, summoned a general meeting in order to pass a special resolution for carrying the amalgamation into effect. Some of the members thereupon filed a plaint in the county court to prevent this being done, and obtained a receiver of the assets of the society, although the resolution for amalgamation had not then been passed. The public officer of the society applied for a prohibition to restrain

Conversion of society into company.

71.—(1) A registered society may, by special resolution, determine to convert itself into a company under the Companies Acts, 1862 to 1890 (*k*), or to amalgamate with or transfer its engagements to any such company.

(2) If a special resolution for converting a society into a company contains the particulars required by the Companies Acts, 1862 to 1890 (*k*), to be contained in the memorandum of association of a company, and a copy thereof has been registered at the central office, a copy of that resolution under the seal or stamp of the central office shall have the same effect as a memorandum of association duly signed and attested under the said Acts.

(3) If the society is registered as, or amalgamates with, or transfers all its engagements to, a company, the registry of the society

the proceedings in the county court, and it being held that that court had no jurisdiction to interfere with the action of the society until the special resolution had been passed and confirmed, a writ of prohibition was ordered to issue (*Jones* v. *Slee*, 32 Ch. D. 585).

(*k*) Now the Companies (Consolidation) Act, 1908. See *Blythe* v. *Birtley*, [1910] 1 Ch. 228.

under this Act shall thereupon become void, and shall be cancelled by the chief registrar or by the assistant registrar for Scotland or Ireland under his direction; but the registration of a society as a company shall not affect any right or claim subsisting against that society, or any penalty incurred by that society; and for the purpose of enforcing any such right, claim, or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company; and every such right or claim, or the liability to any such penalty shall have priority, as against the property of the company, over all other rights or claims against or liabilities of the company.

Saving right of creditors.

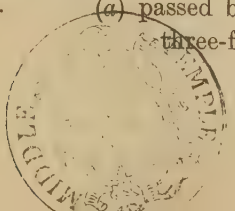
72. An amalgamation or transfer of engagements in pursuance of this Act shall not prejudice any right of a creditor of either or any society party thereto.

73. [Conversion of society into branch.]

Meaning of special resolution.

74. For the purposes of this Act a special resolution shall mean a resolution which is—

(*a*) passed by a majority of not less than three-fourths of such members, of a



registered society, entitled under the rules to vote as may be present in person or by proxy (where the rules allow proxies) at any general meeting of which notice specifying the intention to propose that resolution has been duly given according to the rules; and

(*b*) confirmed by a majority of such members entitled under the rules to vote as may be present in person or by proxy (where the rules allow proxies), at a subsequent general meeting of which notice has been duly given, held not less than fourteen days nor more than one month from the day of the meeting at which such resolution was first passed.

At any meeting mentioned in this section a declaration by the chairman that the resolution has been carried shall be conclusive evidence of the fact.

Registration of special resolutions.

75. A copy of every special resolution for any of the purposes mentioned in this Act, signed by the chairman of the meeting and

countersigned by the secretary, shall be sent to the central office and registered there, and until that copy is so registered the special resolution shall not take effect.

INSPECTION: CANCELLING AND SUSPENSION OF REGISTRY: DISSOLUTION.

Inspectors and special meetings.

76.—(1) Upon the application—

(*a*) of one-fifth of the whole number of members of a registered society; or

(*b*) in the case of a registered society of one thousand members and not exceeding ten thousand, of one hundred members; or

(*c*) in the case of a registered society of more than ten thousand members, of five hundred members,

the chief registrar, or in cases of societies registered and doing business exclusively in Scotland or in Ireland the assistant registrars for Scotland and Ireland respectively, but with the consent of the Treasury in every case, may—

(*a*) appoint an inspector or inspectors to

examine into and report on the affairs of the society; or

(*b*) call a special meeting of the society.

(2) The application under this section shall be supported by such evidence, for the purpose of showing that the applicants have good reason for requiring an inspection to be made or meeting to be called, and that they are not actuated by malicious motives in their application, and such notice thereof shall be given to the society, as the chief registrar directs.

(3) The chief or assistant registrar may, if he thinks fit, require the applicants to give security for the costs of the proposed inspection or meeting, before appointing any inspector or calling the meeting.

(4) All expenses of and incidental or preliminary (*l*) to any such inspection or meeting shall be defrayed by the members applying therefor or out of the funds of the society, or by the members or officers, or former members or officers, of the society in such proportions as the chief or assistant registrar directs.

(*l*) 8 Edw. 7, c. 32, s. 7.

(6) An inspector appointed under this section may require the production of all or any of the books and documents of the society, and may examine on oath its officers, members, agents, and servants in relation to its business, and may administer such oath accordingly.

(6) The chief or assistant registrar may direct at what time and place a special meeting under this section is to be held and what matters are to be discussed and determined at that meeting, and the meeting shall have all the powers of a meeting called according to the rules of the society, and shall in all cases have power to appoint its own chairman, any rule of the society to the contrary notwithstanding.

(7) This section shall not apply to a society with branches, except with the consent of the central body of that society.

Cancelling and suspension of registry.

77.—(1) The chief registrar, or, in the case of a society registered and doing business in Scotland or Ireland exclusively, the assistant registrar for Scotland or Ireland, may—

(*a*) if he thinks fit, at the request of a

society, to be evidenced in such manner as he may direct; or

(*b*) with the approval of the Treasury, on proof to his satisfaction that an acknowledgment of registry has been obtained by fraud or mistake, or that a society exists for an illegal purpose, or has wilfully, and after notice from a registrar whom it may concern violated any of the provisions of this Act, or has ceased to exist,

by writing under his hand cancel the registry of a society.

(2) The chief or assistant registrar, in any case in which he might, with the approval of the Treasury, cancel the registry of a society, may, by writing under his hand, suspend the registry for any term not exceeding three months, and may, with the approval of the Treasury, renew the suspension for the like period.

(3) Unless the chief or assistant registrar has given to a registered society not less than two months' previous notice in writing, specifying briefly the ground of any proposed

cancelling or suspension, the registry of the society shall not be cancelled (except at its request) or suspended.

(4) Where the registry of a society has been cancelled or suspended, notice thereof shall forthwith be advertised.

(5) Where the registry of a society has been suspended or cancelled, the society shall from the time of the suspension or cancelling (but if suspended, only while the suspension lasts, and subject also to the right of appeal given by this section) absolutely cease to enjoy as such the privileges of a registered society, but without prejudice to any liability actually incurred by the society, and any such liability may be enforced against the society as if the suspension or cancelling had not taken place.

(6) A society may appeal from the cancelling of its registry, or from any suspension thereof which is renewed after six months, as follows :—

(*a*) from the assistant registrar for Scotland or Ireland to the chief registrar and from him to the Court of Session

in Scotland or the High Court in Ireland respectively ; and

(*b*) from the chief registrar, in cases not relating exclusively either to Scotland or to Ireland, to the High Court in England.

Dissolution of societies.

78.—(1) Subject to the provision of this Act as to the dissolution of societies with branches, a registered society or branch may terminate or be dissolved in any of the following ways :—

(*a*) upon the happening of any event declared by the rules to be the termination of the society or branch ; or

(*b*) as respects societies or branches other than friendly societies or branches, by the consent of three-fourths of the members, testified by their signatures to the instrument of dissolution ; or

(*c*) as respects friendly societies or branches by the consent of five-sixths in value of the members (including honorary members, if any), testified by their signatures to the instrument of dissolution, and also by the written

consent of every person receiving or entitled to receive any relief, annuity, or other benefit from the funds of the society or branch, unless the claim of that person is first duly satisfied, or adequate provision made for satisfying that claim, and, in the case of a branch, with the consent of the central body of the society, or in accordance with the general rules of the society; or (*m*)

(*d*) by the award of the chief registrar or assistant registrars in the cases specified in this Act.

(2) The provisions of this Act as to the method of calculating the value of members and the remedy of members and persons dissatisfied with the provisions for satisfying their claims in the case of the amalgamation

(*m*) The majority bind the minority to a dissolution, but cannot alter their rights under the rules (*Kemp* v. *Wright*, [1895] 1 Ch. 121; *Botten* v. *City and Suburban Permanent Building Society*, [1895] 2 Ch. 441). As to winding-up under the Companies Act, see *The Alfreton District Friendly and Provident Society*, 7 L. T. 817; *Re Independent Protestant Loan and Fund Society*, [1895] 1 I. R. 1.

or transfer of engagements of a registered friendly society shall apply to the dissolution of a registered friendly society or branch.

Instrument of dissolution.

79. When a registered society or branch is terminated by an instrument of dissolution :—

(1) The instrument shall set forth—

(*a*) the liabilities and assets of the society or branch in detail ; and

(*b*) the number of members and the nature of their interests in the society or branch ; and

(*c*) the claims of creditors (if any), and the provision to be made for their payment ; and

(*d*) the intended appropriation or division of the funds and property of the society or branch, unless the appropriation or division is stated in the instrument of dissolution to be left to the award of the chief registrar.

(2) Alterations in the instrument of dissolution may be made with the like consents as are in this Act required for the dissolution of a society or branch, testified in the same manner.

(3) A statutory declaration shall be made by one of the trustees, or by three members and the secretary of the society or branch, that the provisions of this Act have been complied with, and shall be sent to the registrar with the instrument of dissolution.

(4) The instrument shall not in the case of a registered friendly society or branch direct or contain any provision for a division or appropriation of the funds of the society or branch, or any part thereof, otherwise than for the purpose of carrying into effect the objects of the society or branch as declared in the rules thereof, unless the claim of every member or person claiming any relief, annuity, or other benefit from the funds thereof is first duly satisfied, or adequate provisions are made for satisfying those claims.

(5) The instrument of dissolution and all alterations therein shall be registered in manner in this Act provided for the registry of amendments of rules, and shall be binding upon all the members of the society or branch.

(6) The registrar shall cause a notice of the

dissolution to be advertised at the expense of the society or branch, and, unless within three months from the date of the *Gazette* in which the advertisement appears, a member or other person interested in or having any claim on the funds of the society or branch commences proceedings to set aside the dissolution of the society or branch, and the dissolution is set aside accordingly, the society or branch shall be legally dissolved from the date of that advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signature thereto.

Dissolution by award.

80.—(1) Upon the application made in writing under their hands—

(*a*) of one-fifth of the whole number of members of a registered society or branch; or

(*b*) in the case of a registered society or branch of one thousand members and not exceeding ten thousand, of one hundred members; or

(*c*) in the case of a registered society or

branch of more then ten thousand members, of five hundred members, the chief registrar may by himself, or by any assistant registrar, or by any actuary or public auditor whom the chief registrar may appoint in writing under his hand, investigate the affairs of the society or branch, but shall give not less than one month's (*n*) previous notice in writing to the society or branch whose affairs are to be investigated.

(2) The application shall—

(*a*) state that the funds of the society or branch are insufficient to meet the existing claims thereon, or that the rates of contribution fixed in the rules of the society or branch are insufficient to cover the benefits assured; and

(*b*) set forth the grounds on which the insufficiency is alleged; and

(*c*) request an investigation into the affairs of the society or branch with a view to the dissolution thereof.

(3) If upon the investigation it appears

(*n*) 8 Ed. 7, c. 32, s. 8.

that the funds of the society or branch are insufficient to meet the existing claims thereon, or that the rates of contribution fixed in the rules of the society or branch are insufficient to cover the benefits assured to be given by the society or branch, the chief registrar may, if he considers it expedient so to do, award that the society or branch be dissolved, and its affairs wound up, and shall direct in what manner the assets of the society or branch shall be divided or appropriated: Provided always that the chief registrar may suspend his award for such period as he may deem necessary to enable the society or branch to make such alterations and adjustment of contributions and benefits as will in his judgment prevent the necessity of the award of dissolution being made.

(4) A registrar proceeding under this section shall have all the same powers and authorities, enforceable by the same penalties, as in the case of a dispute referred to him under this Act.

(5) Every award under this section, whether for dissolution or distribution of

funds, shall be final and conclusive on the society or branch in respect of which the award is made, and on all members of the society or branch and on all other persons having any claim on the funds of the society or branch, without appeal, and shall be enforced in the same manner as a decision on a dispute under this Act.

(6) The expense of every investigation and award, and of publishing every notice of dissolution, shall be paid out of the funds of the society or branch before any other appropriation thereof is made.

(7) Notice of every award for dissolution shall, within twenty-one days after the award has been made, be advertised by the central office and unless, within three months from the date on which that advertisement appears, a member or person interested in or having any claim on the funds of the society or branch commences proceedings to set aside the dissolution of the society or branch consequent upon such award, and the dissolution is set aside accordingly, the society or branch shall be legally dissolved from the date of the

advertisement, and the requisite consents to the application to the registrar shall be considered to have been duly obtained without proof of the signatures thereto.

Advertisement of notices.

81. A notice required by this Act to be advertised shall be published in the *Gazette* and in some newspaper in general circulation in the neighbourhood of the registered office of the society or branch.

Dissolution of societies having branches.

82. The provisions of this Act respecting the dissolution of societies shall not apply to any society having branches except with the consent of the central body of the society.

Notice of proceedings or order to set aside dissolution.

83.—(1) Where a person takes any proceeding to set aside the dissolution of a society or branch, he shall give notice of the proceeding to the central office not less than seven days before the proceeding is commenced (*o*).

(2) Where an order is made setting aside the dissolution of a society or branch, the society or branch shall give notice of the order to the central office within seven days after the order has been made.

(*o*) See *Glover* v. *Giles*, 18 Ch. D. 181; *Rudd* v. *James*, [1896] 2 Ch. 561.

Offences, Penalties, and Legal Proceedings.

84. [Offences.]

85. [Offences by societies to be also offences by officers, etc.]

86. [Continuing offences.]

87. [Punishment of fraud, false declarations, and misappropriations (*p*).]

88. [Fine for falsification.]

89. [Fine for ordinary offences.]

90. [Special offences in the case of friendly societies.]

91. [Recovery of fines (*q*).]

92. [Jurisdiction of court of summary jurisdiction.]

93. [Appeals.]

Legal proceedings.

94.—(1) The trustees of a registered society or branch, or any other officers (*r*) authorised by the rules thereof, may bring or defend, or

(*p*) See 8 Ed. 7, c. 32, s. 9.

(*q*) See 8 Ed. 7, c. 32, s. 10.

(*r*) Where the plaintiff sued the secretary for the costs and charges occasioned by a compromise come to between the plaintiff and the society it was held that the secretary was properly made defendant (*Roberts* v. *Page*, 1 Q. B. D. 476).

cause to be brought or defended, any action or other legal proceeding in any court whatsoever, touching or concerning any property, right, or claim of the society or branch, and may sue and be sued in their proper names, without other description than the title of their office (*s*).

(2) In legal proceedings brought under this Act by a member, or person claiming through a member, a registered society or branch may also be sued in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society or branch within the jurisdiction of the court in which the legal proceeding is brought, with the addition of the words "on behalf of the society or branch" (naming the same).

(3) A legal proceeding shall not abate or be discontinued by the death, resignation, or removal from office of any officer, or by any

(*s*) In an unreported case of *Sutton* v. *Fisher*, heard at the Shoreditch County Court, it was held that the liability of the trustees on contracts is limited to the assets of the club, and that they could not be made personally liable. Cf. sect. 49 (1), *supra*.

act of any such officer after the commencement of the proceedings.

(4) The summons, writ, process, or other proceeding, to be issued to or against the officer or other person sued on behalf of a registered society or branch, shall be sufficiently served by personally serving that officer or other person, or by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business.

(5) In all cases where the said summons, writ, process, or other proceeding is not served by means of such personal service or by leaving a true copy thereof at the registered office of the society or branch as aforesaid, a copy thereof shall be sent in a registered letter addressed to the committee at the registered office of the society or branch, and posted at least six days before any further step is taken on the proceeding (*t*).

(*t*) See 8 Ed. 7, c. 32, s. 11.

FEES.

96.—(1) The Treasury may determine a scale of fees to be paid for matters to be transacted or for the inspection of documents under this Act. Fees.

(2) A fee shall not be payable on the registry of any . . . working-men's club, or of any amendment of the rules thereof.

APPLICATION OF ACT.

102. In the application of this Act to Scotland — Application to Scotland.

The expression "land" shall include heritable subjects of whatever description;

The expressions "court of summary jurisdiction" and "county court" shall mean the sheriff court of the county;

The expression "administration" shall mean confirmation;

The expression "misdemeanor" shall mean crime and offence.

SUPPLEMENTAL.

106. In this Act, unless a contrary intention appears: Definitions.

The expression "the registrar" shall mean

for England the central office, and for Scotland or Ireland the assistant registrar for Scotland or Ireland :

" Land " shall include any interest in land :

" Property " shall extend to all property whether real or personal (including books and papers) :

" Registered society " shall mean a society registered under this Act, and shall include societies subsisting at the commencement of this Act to which the provisions of this Act apply :

" Amendment of rule " shall include a new rule, and a resolution rescinding a rule :

" Branch " shall mean any number of the members of a society, under the control of a central body, having a separate fund, administered by themselves or by a committee or officers appointed by themselves, and bound to contribute to a fund under the control of a central body :

" Committee " shall mean the committee of management or other directing body of a society or branch :

" Persons claiming through a member "

shall include the nominees of the member where nomination is allowed :

" Officer " shall include any trustee, treasurer, secretary, or member of the committee of management of a society or branch, or person appointed by the society or branch, to sue and be sued on its behalf :

" Meeting " shall include (where the rules of a society or branch so allow) a meeting of delegates appointed by members :

" Gazette " shall mean the *London Gazette* for England, the *Edinburgh Gazette* for Scotland, and the *Dublin Gazette* for Ireland ;

" Treasury regulations " shall mean any regulations made and approved by the Treasury and in force under this Act (*u*).

(*u*) See 8 Ed. 7, c. 32, s. 13.

THE FIRST SCHEDULE.

MATTERS TO BE PROVIDED FOR BY THE RULES OF SOCIETIES REGISTERED UNDER THIS ACT.

S. 9 (3). [38 & 39 Vict. c. 60, Sch. II.; 50 & 51 Vict. c. 56, ss. 14 and 15; and 58 & 59 Vict. c. 26, s. 18.]

1. The name and place of office of the society.

2. The whole of the objects for which the society is to be established, the purposes for which the funds thereof shall be applicable, the terms of admission of members, the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member, and the consequences of non-payment of any subscription or fine.

3. The mode of holding meetings and right of voting, and the manner of making, altering or rescinding rules.

4. The appintment and removal of a committee of management (by whatever name), of a treasurer and other officers, and of trustees, and in the case of a society with branches, the composition and powers of the

central body, and the conditions under which a branch may secede from the society.

5. The investment of the funds, the keeping of the accounts, and the audit of the same once a year at least.

6. Annual returns to the registrar of the receipts, funds, effects, and expenditure, and number of members, of the society.

7. The inspection of the books of the society by every person having an interest in the funds of the society.

8. The manner in which disputes shall be settled.

12. The voluntary dissolution of the society by consent in a friendly society of not less than five-sixths in value of the members, and of every person for the time being entitled to any benefit from the funds of the society, unless his claim be first satisfied or adequately provided for.

13. The right of one-fifth of the total number of members, or of one hundred members in the case of a society of one thousand members and not exceeding ten thousand, or of five hundred members in the

case of a society of more than ten thousand members, to apply to the chief registrar, or in case of societies registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland for an investigation of the affairs of the society, or for winding up the same.

INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893.

(56 & 57 Vict. c. 39.)

Registration of Societies.

4. [Societies which may be registered.]

5. [Conditions of registration.]

6. [Acknowledgment of registry.]

7. [Appeals from refusal to register.]

8. [Effect of acknowledgment of registry.]

9. [Cancelling and suspension of registry (*a*).]

Rules.

Rules and amendments.

10.—(1) The Rules of a society registered under this Act shall contain provisions in respect of the several matters mentioned in the Second Schedule to this Act.

(2) An amendment of a rule of a society registered under this Act shall not be valid

(*a*) These provisions are similar to those in 59 & 60 Vict. c. 25, *sup.*, p. 174.

until the same has been registered under this Act, for which purpose two copies of the same, signed by three members and the secretary, shall be sent to the registrar.

(3) The registrar shall, on being satisfied that any amendment of a rule is not contrary to the provisions of this Act, issue to the society an acknowledgment of registry of the same, which shall be conclusive evidence that the same is duly registered.

(4) A copy of the rules of a registered society shall be delivered by the society to every person on demand, on payment of a sum not exceeding one shilling.

(5) The rules of a registered society, or any schedule thereto, may set forth the form of any instrument necessary for carrying the purposes of the society into effect.

(6) The rules of every society registered under this Act shall provide for the profits being appropriated to any purposes stated therein or determined in such manner as the rules direct.

DUTIES OF REGISTERED SOCIETIES.

11. Every registered society shall have a registered office to which all communications and notices shall be addressed, and shall send to the registrar notice of the situation of such office, and of every change therein. Registered office.

12. Every registered society shall paint or affix, and keep painted or affixed its registered name on the outside of every office or place in which the business of the society is carried on, in a conspicuous position, in letters easily legible, and have its registered name engraven in legible characters on its seal, and have its registered name mentioned in legible characters in all notices, advertisements, and other official publications of the society, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of such society, and in all bills of parcels, invoices, receipts, and letters of credit of the society. Publication of name.

PRIVILEGES OF SOCIETIES.

Incorporation of society with limited liability.

21. The registration of a society shall render it a body corporate by the name described in the acknowledgment of registry, by which it may sue and be sued, with perpetual succession and a common seal, and with limited liability; and shall vest in the society all property for the time being vested in any person in trust for the society; and all legal proceedings pending by or against the trustees of any such society may be prosecuted by or against the society in its registered name without abatement.

Rules to bind members.

22. The rules of a registered society shall bind the society and all members thereof and all persons claiming through them respectively to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were contained in such rules a covenant on the part of such member, his heirs, executors, administrators, and assigns, to conform thereto, subject to the provisions of this Act: Provided that a society registered at the time when this Act

comes into operation, or the members thereof, may respectively exercise any power given by this Act, and not made to depend on the provisions of its rules, notwithstanding any provision contained in any rule thereof registered before this Act was passed.

Remedy for debts from members.

23.—(1) All moneys payable by a member to a registered society shall be a debt due from such member to the society, and shall be recoverable as such either in the county court of the district in which the registered office of the society is situate, or in that of the district in which such member resides, at the option of the society.

(2) A registered society shall have a lien on the shares of any member for any debt due to it by him, and may set off any sum credited to the member thereon in or towards the payment of such debt (*b*).

Exemption from income tax.

24. A registered society shall not be chargeable under Schedules C. and D. of the Income Tax Acts unless it sells to persons not

(*b*) See *Gwendolen Freehold Land Society* v. *Wicks*, [1904] 2 K. B. 622 ; *In re Gwaur, etc., Society, Ltd.*, [1901] 2 K. B. 477.

members thereof, and the number of shares of the society is limited either by its rules or its practice. But no member of or person employed by the society shall be exempt from any assessment to the said duties to which he would be otherwise liable.

Transfer stock standing in name of trustee.

31.—(1) When any person in whose name any stock belonging to a registered society transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others or solely, as a trustee therefor, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the chief registrar, on application in writing from the secretary and three members of the society, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the society.

(2) The transfer shall be made by the

surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the chief registrar so directs, then by the Accountant General or Deputy or Assistant Accountant General of the Bank of England or Bank of Ireland, as the case may be.

(3) The Banks of England and Ireland are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

Contracts how made, varied, or discharged.

35 Contracts on behalf of a registered society may be made, varied, or discharged as follows :—

(*a*) Any contract, which (if made between private persons) would be by law required to be in writing, and if made according to the English law to be under seal, may be made on behalf of the society in writing under the common seal of the society, and may in the same manner be varied or discharged ;

(*b*) Any contract, which if made between

private persons would be by law required to be in writing, and signed by the persons to be charged therewith, may be made on behalf of the society in writing by any person acting under the express or implied authority of the society, and may in the same manner be varied or discharged ;

(*c*) Any contract under seal which, if made between private persons, might be varied or discharged by a writing not under seal, signed by any person interested therein, may be similarly varied or discharged on behalf of the society by a writing not under seal, signed by any person acting under the express or implied authority of the society ;

(*d*) Any contract, which if made between private persons would be by law valid though made by parol only and not reduced into writing, may be made by parol on behalf of the society by any person acting under the express or implied authority of the society, and

may in the same manner be varied or discharged ;

(*e*) A signature, purporting to be made by a person holding any office in the society, attached to a writing whereby any contract purports to be made, varied, or discharged by or on behalf of the society, shall primâ facie be taken to be the signature of a person holding at the time when the signature was made the office so stated.

All contracts which may be or have been made, varied, or discharged according to the provisions contained in this section, shall, so far as concerns the form thereof, be effectual in law and binding on the society and all other parties thereto, their heirs, executors, or administrators as the case may be.

Property and Funds of Registered Society.

36. [Holding of land.]

37. [Provision as to copyholds.]

38.—(1) A registered society may invest any part of its capital in or upon any security Investments by societies.

authorised by its rules, and also, if the rules do not direct otherwise—

(*a*) in or upon any security in which trustees are for the time being authorised by law to invest; and

(*b*) in or upon any mortgage, bond, debenture, debenture stock, corporation stock, annuity, rentcharge, rent, or other security (not being securities payable to bearer) authorised by or under any Act of Parliament passed or to be passed of any local authority as defined by section thirty-four of the Local Loans Act, 1875; and

38 & 39 Vict. c. 83.

(*c*) in the shares or on the security of any other society registered or deemed to be registered under this Act, or under the Building Societies Acts, or of any company registered under the Companies Act or incorporated by Act of Parliament or by charter, provided that no such investment be made in the shares of any society or company other than one with limited liability.

(2) A society so investing shall be deemed

to be a person within the meaning of the Companies Act, and of the Building Societies Acts.

(3) Any investments made before the passing of this Act, which would have been valid if this Act had then been in force, are hereby ratified and confirmed.

43. [Discharge of mortgage by receipt endorsed.]

44. [Discharge of mortgages in Scotland.]

Officers in Receipt or Charge of Money.

Security by officers.

47. Every officer of a registered society having receipt or charge of money, if the rules of the society require, shall before taking upon himself the execution of his office, become bound, either with or without a surety as the committee may require, in a bond according to one of the forms set forth in the Third Schedule to this Act, or such other form as the committee of the society approve, or give the security of a guarantee society, in such sum as the committee directs, conditioned for his rendering a just and true account of all moneys received and paid by him on

account of the society at such times as its rules appoint, or as the society or the committee thereof require him to do, and for the payment by him of all sums due from him to the society.

Accounts of officers.

48.—(1) Every officer of a registered society having receipt or charge of money, or his executors or administrators, shall, at such times as by the rules of the society he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society, or by the committee thereof, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all moneys and deliver all property for the time being in his hands or custody to such person as the society or the committee appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys or to deliver such property in manner aforesaid the society may sue upon the bond or security before-mentioned, or may apply to the county court (which may proceed in a

summary way), or to a court of summary jurisdiction, and the order of either such court shall be final and conclusive.

(2) This section shall apply to every servant of a registered society in receipt or charge of money in every case where he is not engaged under a special agreement to account.

DISPUTES.

Decision of disputes.

49. (1) Every dispute between a member of a registered society, or any person aggrieved who has for not more than six months ceased to be a member of a registered society, or any person claiming through such member or person aggrieved, or claiming under the rules of a registered society, and the society or an officer thereof, shall be decided in manner directed by the rules of the society, if they contain any such direction, and the decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the county court.

(2) The parties to a dispute in a society may, by consent (unless the rules of such society expressly forbid it), refer such dispute to the chief registrar, or to the assistant registrar in Scotland or Ireland, who shall, with the consent of the Treasury, either by himself or by any other registrar, hear and determine such dispute, and shall have power to order the expenses of determining the same to be paid either out of the funds of the society or by such parties to the dispute as he shall think fit, and such determination and order shall have the same effect and be enforceable in like manner as a decision made in the manner directed by the rules of the society.

(3) The chief or other registrar to whom any dispute is referred may administer oaths, and may require the attendance of all parties concerned and of witnesses, and the production of all books and documents relating to the matter in question; and any person refusing to attend, or to produce any documents or to give evidence, before such chief or other registrar, shall be guilty of an offence under this Act.

(4) Where the rules of a society direct that disputes shall be referred to justices, the dispute shall be determined by a court of summary jurisdiction :

Provided that in every case of dispute cognisable under the rules of a society by a court of summary jurisdiction, it shall be lawful for the parties thereto to enter into a consent referring such dispute to the county court, which may hear and determine the matter in dispute.

(5) Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society for a reference under its rules, the member or person aggrieved may apply either to the county court, or to a court of summary jurisdiction, which may hear and determine the matter in dispute.

(6) Notwithstanding anything contained in the Arbitration Act, 1889, or in any other Act, the court and the chief or other registrar shall not be compelled to state a special case on any question of law arising in the case, but the court or chief or other registrar, may, at

52 & 53 Vict. c. 49.

the request of either party, state a case for the opinion in England and Ireland of the Supreme Court of Judicature, and in Scotland, of either division of the Inner House of the Court of Session, on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents, and in Scotland may grant such warrant for the recovery of documents and examination of havers, as might be granted by any court of law or equity; such discovery to be made on behalf of the society by such officer of the same as such court or registrar may determine (*c*).

INSPECTION OF AFFAIRS.

50. [Power to appoint inspectors.]

CHANGE OF NAME: AMALGAMATION: CONVERSION.

Meaning of special resolution.

51. For the purposes of this Act a special resolution shall mean a resolution which is—

(*a*) passed by a majority of not less than

(*c*) See *Cox* v. *Hutchinson*, [1910] 1 Ch. 513.

three-fourths of such members of a registered society for the time being entitled under the rules to vote as may have voted in person, or by proxy where the rules allow proxies, at any general meeting of which notice, specifying the intention to propose the resolutions, has been duly given according to the rules ; and

(*b*) confirmed by a majority of such members for the time being entitled under the rules to vote as may have voted in person, or by proxy where the rules allow proxies, at a subsequent general meeting of which notice has been duly given. held not less than fourteen days nor more than one month from the day of the meeting at which such resolution was first passed.

At any meeting mentioned in this section a declaration by the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact.

52. [Power to change name.]

53. [Amalgamation and transfer of engagements.]

54. [Conversion of society into company.]

55. [Conversion of company into society.]

Saving for rights of creditors.

57. An amalgamation or transfer of engagements in pursuance of this Act shall not prejudice any right of a creditor of any registered society party thereto.

Dissolution of Societies.

Provisions as to dissolution of societies.

58. A registered society may be dissolved—

(*a*) By an order to wind up the society, or a resolution for the winding up thereof, made as is directed in regard to companies by the Companies Act, [1908], the provisions whereof shall apply to any such order or resolution, except that the term "registrar" shall for the purpose of such winding up have the meaning given to it by this Act; or

(*b*) By the consent of three-fourths of the members, testified by their signatures to an instrument of dissolution.

Transfer of winding up from county court.

59. Any proceedings in the winding up of a registered society which at the passing of this Act are pending in any county court may, on application made by or on behalf of the registrar, with the consent of the Treasury, be transferred to the High Court, and thereupon the Companies Act, [1908], shall, so far as applicable, apply thereto accordingly.

Liability of members in winding up.

60. Where a registered society is wound up in pursuance of an order or resolution the liability of a present or past member of the society to contribute for payment of the debts and liabilities of the society, the expenses of winding up, and the adjustment of the rights of contributories amongst themselves, shall be qualified as follows :—

(*a*) No individual, society, or company, who or which has ceased to be a member for one year or upwards prior to the commencement of the winding up, shall be liable to contribute ;

(*b*) No individual, society, or company shall be liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member ;

(*c*) No individual, society, or company, not a member, shall be liable to contribute, unless it appears to the court that the contributions of the existing members are insufficient to satisfy the just demands on the society;

(*d*) No contribution shall be required from any individual, society, or company exceeding the amount, if any, unpaid on the shares in respect of which he or it is liable as a past or present member;

(*e*) An individual, society, or company shall be taken to have ceased to be a member, in respect of any withdrawable share withdrawn, from the date of the notice or application for withdrawal.

Provisions as to instrument of dissolution.

61. Where a society is terminated by an instrument of dissolution:—

(*a*) The instrument of dissolution shall set forth the liabilities and assets of the society in detail, the number of members and the nature of their interests in the society respectively,

the claims of creditors (if any) and the provisions to be made for their payment, and the intended appropriation or division of the funds and property of the society, unless the same be stated in the instrument of dissolution to be left to the award of the chief registrar;

(*b*) Alterations in the instrument of dissolution may be made with the like consents as herein-before provided, and testified in the same manner;

(*c*) A statutory declaration shall be made by three members and the secretary of the society that the provisions of this Act have been complied with, and shall be sent to the registrar with the instrument of dissolution; and any person knowingly making a false or fraudulent declaration in the matter shall be guilty of a misdemeanor;

(*d*) The instrument of dissolution and all alterations therein shall be registered in the manner herein provided for the

registry of rules, and shall be binding upon all the members of the society ;

(*e*) The registrar shall cause a notice of the dissolution to be advertised at the expense of the society in the *Gazette* and in some newspaper circulating in or about the locality in which the registered office of the society is situated ; and unless, within three months from the date of the *Gazette* in which such advertisement appears, a member or other person interested in or having any claim on the funds of the society commences proceedings to set aside the dissolution of the society in the county court of the district where the registered office of the society is situate, and such dissolution is set aside accordingly, the society shall be legally dissolved from the date of such advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signatures thereto.

(*f*) Notice shall be sent to the central office of any proceeding to set aside the dissolution of a society, not less than seven days before it is commenced, by the person by whom it is taken, or of any order setting it aside, within seven days after it is made by the society (*d*).

Offences, Penalties, and Legal Proceedings.

62. [Offences by societies.]

63. [Offences by societies to be also offences by officers, etc.]

64. [Punishment of fraud or misappropriation.]

65. [Penalty for falsification.]

66. [Penalty for not using name of society.]

67. [Delivery of untrue rules.]

68. [Penalties for ordinary offences.]

69. [Recovery of penalties.]

70. [Appeals from summary decisions.]

(*d*) See *In re Ruddington Land*, [1909] 1 Ch. 701 : *In re United Service, etc., Society, Ltd.*, [1909] 2 Ch. 526.

Section 10.

SCHEDULE II.

MATTERS TO BE PROVIDED FOR BY THE RULES OF SOCIETIES REGISTERED UNDER THIS ACT.

1. Object, name and registered office of the society.

2. Terms of admission of the members, including any society or company investing funds in the society under the provisions of this Act.

3. Mode of holding meetings, scale and right of voting, and of making, altering, or rescinding rules.

4. The appointment and removal of a committee of management, by whatever name, of managers or other officers, and their respective powers and remuneration.

5. Determination of the amount of interest, not exceeding two hundred pounds sterling, in the shares of the society which any member other than a registered society may hold.

6. Determination whether the society may contract loans or receive money on deposit subject to the provisions of this Act from members or others; and, if so, under what condition, on what security, and to what limits of amount.

7. Determination whether the shares or any of them shall be transferable; and provision for the form of transfer and registration of the shares, and for the consent of the committee thereto; determination whether the shares or any of them shall be withdrawable, and provision for the mode of withdrawal and for payment of the balance due thereon on withdrawing from the society.

8. Provision for the audit of accounts and for the appointment of auditors or a public auditor.

9. Determination whether and how members may withdraw from the society, and provision for the claims of the representatives of deceased members, or the trustees of the property of bankrupt members, and for the payment of nominees.

10. Mode of application of profits.

11. Provisions for the custody and use of the seal of the society.

12. Determination whether, and by what authority, and in what manner, any part of the capital may be invested.

INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1894.

(57 Vict. c. 8.)

An Act to amend the Industrial and Provident Societies Act, 1893, in so far as it relates to the Island of Jersey.

[18th June 1894.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, as follows :

1. This Act may be cited as the Industrial and Provident Societies Act, 1894, and the Industrial and Provident Societies Act, 1893, and this Act may be cited together as the Industrial and Provident Societies Acts, 1893 and 1894. Short title.

Substitution of constable for bailiff. 56 & 57 Vict. c. 39.

2. In sub-head (*d*) of sub-section (1) of section seventy-seven of the Industrial and Provident Societies Act, 1893, the words "constable of the parish" shall be substituted for "bailiff of the parish."

Powers of investment.

3. The following shall be added to sub-section (1) of section seventy-seven of the last-mentioned Act as sub-head (*j*): All industrial and provident societies within the said island shall be authorised to invest any part of their funds in the "Rentes Publiques" or in the States' Bonds of the said island, if they think fit.

Printing of future copies of principal Act.

4. All copies of the Industrial and Provident Societies Act, 1893, printed after the passing of this Act by any of the several printers to the Queen's most Excellent Majesty duly authorised to print the statutes of the United Kingsom, shall be printed with the substitution and addition required by this Act.

INDUSTRIAL AND PROVIDENT SOCIETIES (AMENDMENT) ACT, 1895.

(58 & 59 Vict. c. 39.)

An Act to amend the Industrial and Provident Societies Act, 1893.

[6th July 1895.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as the Industrial and Provident Societies (Amendment) Act, 1895. This Act and the Industrial and Provident Societies Acts, 1893 and 1894, may be cited together as the Industrial and Provident Societies Acts, 1893 to 1895.

Proceedings in Scotland.

2. In all proceedings in winding up a society in Scotland under the Industrial and Provident Societies Act, 1893, the court having jurisdiction shall be the sheriff court.

Appeals 56 & 57 Vict. c. 89.

3. For sub-section one of section seven of the Industrial and Provident Societies Act, 1893, shall be substituted the following sub-section :—

(1) If the registrar refuses to register the society, or any rules or amendments of rules, the society may appeal from such refusal as follows :—

(*a*) in England, to the High Court ;

(*b*) in Scotland or Ireland, to the chief registrar, and if he refuses to the Court of Session in Scotland or to the High Court in Ireland.

Printing of future copies of principal Act.

4. All copies of the Industrial and Provident Societies Act, 1893, printed after the passing of this Act by any of the several printers to the Queen's most Excellent Majesty duly authorised to print the statutes of the United Kingdom, shall be printed with the sub-substitution required by this Act.

INDUSTRIAL AND PROVIDENT SOCIETIES (AMENDMENT) ACT, 1913.

(3 & 4 Geo. 5, c. 31.)

An Act to amend the Industrial and Provident Societies Act, 1893.

[15th August 1913.]

Registration of society consisting of two or more other societies. 56 & 57 Vict. c. 39.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. A society consisting solely of two or more registered societies may, notwithstanding anything contained in section five of the Industrial and Provident Societies Act, 1893 (in this Act referred to as the principal Act), be registered if the application to register the society is signed by two members of the

committee and the secretary of each of the constituent societies, and is accompanied by two printed copies of the rules of each such society.

Audit of accounts.

2.—(1) Every registered society shall once in every year submit its accounts for audit to one or more of the public auditors appointed under the provisions of the principal Act.

(2) An auditor shall not hold any other office in connexion with the society.

Annual return.

3.—(1) For paragraph (*c*) of sub-section (2) of section fourteen of the principal Act (which relates to the date to which annual returns are to be made up) the following paragraph shall be substituted :—

" (*c*) shall be made up from the date of its registration or last annual return to that of its last published balance sheet, unless the last-mentioned date is more than four months before or more than one month after the thirty-first day of December, in which case it shall be made up to the said thirty-first day of December inclusive ; and "

(2) A registered society shall, together with the annual return, send to the Registrar a copy of the report of the auditors and a copy of each balance sheet made during the period included in the return.

Triennial returns of share-holders.

4. A registered society shall, once at least in every three years, make out and send to the registrar, together with the annual return for the year, a special return signed by the auditor or auditors showing the holding of each person in the society (whether in shares or loans) at the date to which the said annual return is made out: Provided that, where such persons are in the list of members kept by the society distinguished by numbers, it shall be sufficient if they are distinguished in the special return by such numbers, and in that case it shall not be necessary to specify their names.

Amendment of principal Act as to nominations.

5.—(1) The principal Act shall as respects nominations made after the commencement of this Act have effect as if the following provisions were substituted for section twenty-five of the principal Act:—

"(1) A member of a registered society not being under the age of sixteen years

may, by writing under his hand delivered at or sent to the registered office of the society during the lifetime, of such member or made in any book kept thereat, nominate any person or persons to or among whom there shall be transferred at his decease such property in the society as may be his at the time of his decease (whether in shares, loans, or deposits, or otherwise), or so much thereof as is specified in such nomination, if the nomination does not comprise the whole. If on the death of the nominator the amount of his property in the society comprised in the nomination exceeds one hundred pounds the nomination shall be valid to the extent of the sum of one hundred pounds, but not further or otherwise :

Provided that a person so nominated shall not be an officer or servant of the society unless such officer or servant is the husband, wife,

father, mother, child, brother, sister, nephew, or niece of the nominator.

"(2) A nomination so made may be revoked or varied by a subsequent nomination signed and delivered or sent or made as aforesaid or by any similar document in the nature of a revocation or variation under the hand of the nominator so delivered sent or made as aforesaid, but shall not be revocable or variable by the will of the nominator or by any codicil thereto.

"(3) The society shall keep a book wherein the names of all persons so nominated and all revocations or variations (if any) of such nominations shall be recorded, and the property comprised in any such nomination to an amount not exceeding one hundred pounds shall be payable or transferable to the nominee although the rules of the society declare the shares not to be transferable.

"(4) The marriage of a member of a society shall operate as a revocation of any nomination made by him before such marriage, provided that, in the event of an officer of a society having transferred any property of a member to a nominee, in ignorance of a marriage contracted subsequent to the date of the nomination, the receipt of the nominee shall be a valid discharge to the society, and the society shall be under no liability to any other person claiming such property."

(2) The principal Act shall, as respects nominators dying after the commencement of this Act, have effect as if the following provisions were substituted for subsection (1) of section twenty-six of the principal Act:—

"(1) On receiving satisfactory proof of the death of a nominator, the committee of the society shall, subject to the limitation on amount hereinbefore provided, either transfer the

property comprised in the nomination in manner directed by the nomination, or pay to every person entitled thereunder the full value of the property given to him, unless the shares comprised in the nomination, if transferred as directed by the nominator, would raise the share capital of any nominee to a sum exceeding two hundred pounds, in which case they shall pay him the value of such excess.

" (2) Where a nominee who is nominated under the provisions of this Act is under sixteen years of age, the society may pay the sum nominated to either parent, or to a guardian of the nominee, or to any other person of full age who will undertake to hold the same on trust for the nominee or to apply the same for his benefit and whom the society may think a fit and proper person for the purpose, and the receipt of such parent, guardian, or other person shall be a

sufficient discharge to the society for all moneys so paid."

Provisions as to death duties.

6. The principal Act shall have effect with respect to the payment of duty on the death of members dying after the commencement of this Act as if the following provisions were substituted for section twenty-eight of the principal Act :—

" (1) If the principal value of the estate, in respect of which estate duty is payable, of any deceased member of a registered society exceeds one hundred pounds, any property or money to be transferred or paid under section twenty-five, twenty-six, or twenty-seven of this Act without probate or administration shall be liable to estate duty as part of the amount on which that duty is charged ; and the committee of the society, before making any such transfer or payment, may require a statutory declaration by the claimant or one of the claimants that such principal value, including

the property or money in question, does not, after deduction of debts and funeral expenses, exceed one hundred pounds.

" (2) If the principal value of the property or money to be so transferred or paid exceeds eighty pounds the committee of the society shall, before making any transfer or payment to any person other than the legal personal representative of the deceased member, require production of a certificate from the Commissioners of Inland Revenue of the payment of the estate duty, and a duly stamped receipt for the succession or legacy duty payable in respect of the property or money so transferred or paid, or a certificate that no estate, succession or legacy duty is payable thereon."

Amendment of section 29 of the principal Act.

7. In section twenty-nine of the principal Act (which relates to the property of insane members) the words " not exceeding one hundred pounds " shall be repealed.

Dissolution and transfer of engagements.

8. On dissolution or transfer of engagements, as provided for in sections fifty-eight and fifty-three of the principal Act, the society shall not be dissolved and registration of the society shall not be cancelled until a certificate signed by the liquidator or by the secretary or some other officer of the society approved by the Registrar has been lodged with the Registrar that all property vested in the society has been duly conveyed or transferred by the society to the persons entitled.

Inspections and special meetings.

9. In sub-section (4) of section fifty of the principal Act (which relates to the expenses of inspections and special meetings) after the word "incidental" there shall be inserted the words "or preliminary."

Offences by societies, etc.

10. The following provisions shall be substituted for section sixty-two of the principal Act:—

"It shall be an offence under this Act if—

(*a*) a registered society, or an officer or member thereof, or any other person, fails to give any notice, send any

return or document, do or allow to be done anything which the society, officer, or member, or person is by this Act required to give, send, do, or allow to be done; or

(*b*) a registered society, or an officer or member thereof, or any other person, wilfully neglects or refuses to do any act, or to furnish any information required for the purposes of this Act by the chief or other registrar, or by any other person authorised under this Act, or does anything forbidden by this Act; or

(*c*) a registered society, or an officer or member thereof, or any other person makes a return, or wilfully furnishes information in any respect false or insufficient; or

(*d*) a registered society carries on the business of banking when it has any withdrawable share capital, or in carrying on such business does not make out and keep conspicuously hung up such statement as is herein-before required,

or makes any payment of withdrawable capital contrary to the provisions of this Act."

Recovery of penalties.

11. The following subsections shall be added to the provisions contained in section sixty-nine of the principal Act :—

"(3) Any costs or expenses ordered or directed by the chief or other registrar to be paid by any person under this Act shall be recoverable summarily before a court of summary jurisdiction as a civil debt.

"(4) Where proceedings are taken against a society for the recovery of any fine under this Act, the summons or other process shall be sufficiently served by leaving a true copy thereof at the registered office of the society, or, if that office is closed, by posting the copy on the outer door of that office."

Short title, construction, commence-

12.—(1) This Act may be cited as the Industrial and Provident Societies (Amendment) Act, 1913, and the Industrial and Provident Societies Acts, 1893 to 1895, and this

Act may be cited together as the Industrial and Provident Societies Acts, 1893 to 1913. ment, and repeal.

(2) This Act shall be construed as one with the Industrial and Provident Societies Act, 1893, and shall come into operation on the first day of January nineteen hundred and fourteen.

(3) The principal Act is hereby repealed to the extent specified in the third column of the Schedule to this Act.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
56 & 57 Vict. c. 39.	The Industrial and Provident Societies Act, 1893.	Subsection (1) of section thirteen. In section fourteen, paragraph (*c*) of subsection (2), and all the words from "and if by any persons" to the end of the section. Section twenty-five, except as respects nominations made before the commencement of this Act. Section twenty-six. Subsection (1) of section twenty-seven, from "subject" to the end of the subsection. Section twenty-eight. In section twenty-nine, the words "not exceeding one hundred pounds." Section sixty-two. In section seventy-two the words "but the employment of such auditors shall not be compulsory."

CHANCERY DIVISION.

THE RULES OF INDUSTRIAL AND PROVIDENT SOCIETIES.

DIBBLE v. WILTS AND SOMERSET FARMERS, LIMITED.

(*Before* Mr. Justice P. O. Lawrence.)

A question arose in this action of some importance to members of industrial and provident societies—namely, whether a power to amend the rules by a resolution of a three-fourths majority of the members enabled the society to alter the original rule fixing the number of shares to be held by members so as to compel members to take up more shares than they were originally required to hold, the shares under the rules not being withdrawable.

The action was heard on December 8 and 14, and judgment was delivered to-day. It affects nearly all farmers in the counties of Wilts and Somerset.

There are three thousand members of the defendant society, the Wilts and Somerset Farmers, Limited, and 194,288 shares of 6*s*. 8*d*. had been issued up to December, 1921.

The plaintiff was the occupier of a farm of 219 acres known as Upper Farm, Bream. Burnham-on-Sea, Somerset, and he carried on business there as a dairy farmer. The defendant society was registered on March 23, 1910, under the Industrial and Provident Societies Act, 1893, with the object of carrying on the business of wholesale and retail dealers in dairy farm and garden produce. In June, 1910, the plaintiff became a member of the society and he subscribed and paid for one hundred fully-paid shares. The shares were originally of the nominal value of £1 each, but they have since been reduced to the nominal value of 6*s*. 8*d*. each. The rules of the society when the plaintiff became a member so far as material were :—

(6) *Shares.*—Shares shall be transferable, but not withdrawable. They shall be of the nominal value of £1. . . .

(12) *Shares to be Held by Members.*—Individual members shall hold at least one share for every twenty acres or fraction of twenty acres farmed by them up to five hundred acres, and at least one share for every forty acres or fraction of forty acres above five hundred. . . . Milk retailers shall hold at least six shares for every churn of seventeen gallons retailed daily by them. . . .

(18) *Committee's Consent to Transfers.*—No transfer of shares shall be valid unless the committee's consent has been obtained thereto. . . .

(23) *Repayment on Cessation of Membership.*—If by transfer or otherwise the number of shares held by a member becomes less than the number required by Rule 12 to be held by him, the amount paid up on the shares shall be repaid and the shares cancelled and the member shall cease to be a member.

These rules were altered by an amendment which was registered at the Registry of Friendly Societies on November 14, 1921, and such amendment, so far as material, was :—

Rule 12.—Rescind the whole rule and substitute therefor :—Individual members shall hold at least five shares for every twenty acres or fraction of twenty acres farmed by them up to five hundred acres and at least three shares for every forty acres or fraction of forty acres above five hundred. . . . Milk producers shall hold shares on the above acreage basis or shall hold at least five shares for every dairy cow owned by them, whichever shall be the greater number of shares.

Rule 23, line 4.—Strike out the word "shall" and substitute "may at the discretion of the committee."

By an amendment registered on December 21, 1921, the nominal value of each of the issued and fully paid shares was reduced to 6*s*. 8*d*. by cancelling the sum of 13*s*. 4*d*. on each share. A further alteration registered on March 25, 1922, was as follows :—

Rule 12 as amended November 14, 1921.—Strike out the word "five shares" in the two places in which they occur and substitute therefor "shares of the nominal value of £5."

By Rule 13 it was provided that the total number of shares held by any member should not exceed £200 in nominal value. And Rule 64 provided that the rules might be amended by resolution of a three-fourths majority at a special general meeting, and that no amendment should be valid until it was registered. Section 4 (*a*) of the Industrial and Provident Societies Act, 1893, provided that no member other than one of a registered society should have or claim any interest in the shares of the society exceeding £200. By section 10 an amendment of a rule of any

society registered under that Act must have been registered, and the registrar on being satisfied that any amendment of a rule was not contrary to the provisions of the Act issued an acknowledgment of registry, which was to be conclusive evidence that the same was duly registered. By section 22 it was provided that the rules of a registered society should bind the society and all members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto.

The plaintiff owned thirty-five dairy cows. The defendant society required the plaintiff to take up and pay for 425 additional shares, being the number required to be held by him under Rule 12 as altered after allowing for the one hundred shares of which he was the registered holder.

THE PLAINTIFF'S CLAIM.

The plaintiff refused to take up or pay for these additional shares, and in this action he claimed a declaration that Rule 12 as altered was *ultra vires* and not binding upon him or,

alternatively, that that rule in its original form was invalid, and he asked for an injunction to restrain the society from putting into force against him Rule 12 so altered. Further, he claimed a declaration that the defendant society had no power to reduce its capital, and he sought a declaration that the rules did not constitute or involve any contract as between him and the society to take up or pay for any shares in the society in addition to the shares held by him.

The defendant society stated that each of the amendments of the rules was duly passed by resolution of a three-fourths majority at a special general meeting of the society, and that each amendment was properly registered in pursuance of the provisions of the Act of 1893. They denied that Rule 12 was invalid.

Mr. Clauson, K.C., Mr. D. D. Reid, and Mr. Vaisey appeared for the plaintiff; Mr. Luxmoore, K.C., and Mr. H. St. John Field for the society.

JUDGMENT.

MR. JUSTICE P. O. LAWRENCE said that the question raised was one of general import-

ance under the Act of 1893. The effect of the amendments to the rules was to compel all existing members to acquire further shares and the amount of additional shares which a member might be required to take was practically without limit. None of the cases which had been cited seemed to support the contention that the Act justified such rules. There was a distinction between friendly and building societies and industrial and provident societies, but the law affecting industrial and provident societies had been assimilated to the law affecting companies, and in the case of limited companies it was well settled that what had been effected by the alteration of the rules of this society would have been a breach of the Companies Acts (*Bisgood* v. *Henderson's Transvaal Estates*, 24 *The Times* L. R. 510; [1908] 1 Ch. 743).

His Lordship said that he did not decide whether an industrial and provident society had power to reduce its capital in an ordinary case, but when such reduction formed part of a scheme, as it did in this case, to compel members to acquire further shares it could not

be done. In his judgment the original Rule 12 and that rule as altered was invalid, and a declaration would be made accordingly. Further, the rules did not constitute or involve any contract as between the plaintiff and the society to take up or pay for any shares in the society in addition to the shares held by him

*** *The Publishers desire to acknowledge the permission granted to reprint the above case from the* Times *Newspaper of January* 18, 1923.

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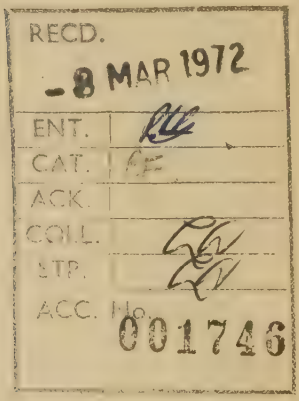

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